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August 28, 2017

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VIA ELECTRONIC FILING

Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

Re: *In the Matter of Accelerating Wireless Broadband Deployment
by Removing Barriers to Infrastructure Development*, WT Docket No. 17-79
*In the Matter of Comment Sought on Streamlining Deployment of Small Cell
Infrastructure by Improving Wireless Facilities Siting Policies; Mobilitie,
LLC Petition for Declaratory Ruling*, WT Docket No. 16-421

Dear Ms. Dortch

On August 24, 2017, Monica Gambino and Robert Millar of Crown Castle along with the undersigned and Ari Meltzer of Wiley Rein LLP met with Wireless Telecommunications Bureau Chief Donald Stockdale and Garnet Hanly, Erica Rosenberg, Jill Springer, Jeffrey Steinberg, Suzanne Tetreault, and Mary Claire York of the Wireless Telecommunications Bureau regarding state and local barriers to deployment of infrastructure to support next generation wireless broadband networks.

The Crown Castle representatives encouraged the FCC to take several actions to prevent delays in the approval of otherwise meritorious applications. First, they urged the FCC to adopt a deemed granted remedy under Section 332 and to interpret Sections 332 of the Communications Act and 6409 of the Spectrum Act to include a presumption that an applicant whose applications have been deemed granted is entitled to a preliminary injunction to compel the issuance of permits necessary to construct the facilities proposed in the deemed granted application. Second, they encouraged the Commission to clarify that the failure by a municipality to act on a siting request is a prohibition under Sections 253(a) and 332. Third, they asked the FCC to clarify that the shot clock begins with an attempt by the applicant to submit an application, notwithstanding any pre-application requirements imposed by the municipality.

The Crown Castle representatives also urged the FCC to streamline compliance with the National Historic Preservation Act by clarifying that certain actions do not have the potential to cause effects on historic places. Specifically, they urged the



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Commission to: (i) extend the existing 30-foot allowance exclusion for replacement towers to expansions of leasehold or fee interest, noting that an estimated 95% of all Crown Castle's Section 106 reviews performed are triggered by fee or leasehold expansions; (ii) eliminate the requirement to perform an environmental assessment on sites located in 100 year floodplains, explaining that these assessments always result in a Finding of No Significant Impact and, in many instances, the sites already require approval from local jurisdictions; and (iii) reduce the fees charged for any remaining tribal review requirements.

The Crown Castle representatives provided an update on efforts to adopt statewide legislation for small cell deployment and explained that these efforts provide an important minimum standard that helps expedite deployment statewide. They noted that despite these efforts at the state level, Commission action is still needed, in part because municipalities and other entities are actively seeking to challenge these state efforts; here, they pointed to recent lawsuits filed in Texas and Florida. They also encouraged the FCC to support existing efforts to develop model legislation, but reiterated that these efforts are a complement to, not a substitute for, Commission action.

Finally, Crown Castle asked the FCC to clarify that municipalities cannot use "stealth" requirements to impose *de facto* size limitations that effectively undercut the purpose of Section 6409 of the Spectrum Act by prohibiting all or most future collocations.

Attached hereto are: (i) photographs of a 14 x 10 foot leasehold expansion that Crown Castle sought at the parking lot of a school in Omaha, Nebraska, for which Crown Castle had to obtain a "no adverse effect" concurrence from the Nebraska SHPO and engage in consultations with 24 tribes; (ii) a recent complaint filed by Rowstar, LLC against the Florida Department of Transportation to enforce an agreement for exclusive use of the department's rights-of-way; and (iii) a recent complaint filed by the City of Austin seeking to derail enforcement of Texas's infrastructure deployment legislation.

Sincerely,

/s/ Joshua S. Turner /s/

Joshua S. Turner

EXHIBIT A

Photographs of Omaha Leasehold Expansion



Photo 5 – Facing north along access away from *Subject Site*



Photo 6 – Facing north overlooking *Subject Site*



Photo 7 – Facing south overlooking *Subject Site*



Photo 8 – Facing east overlooking *Subject Site*



Photo 9 – Facing west overlooking *Subject Site*



Photo 10 – Facing north from *Subject Site*

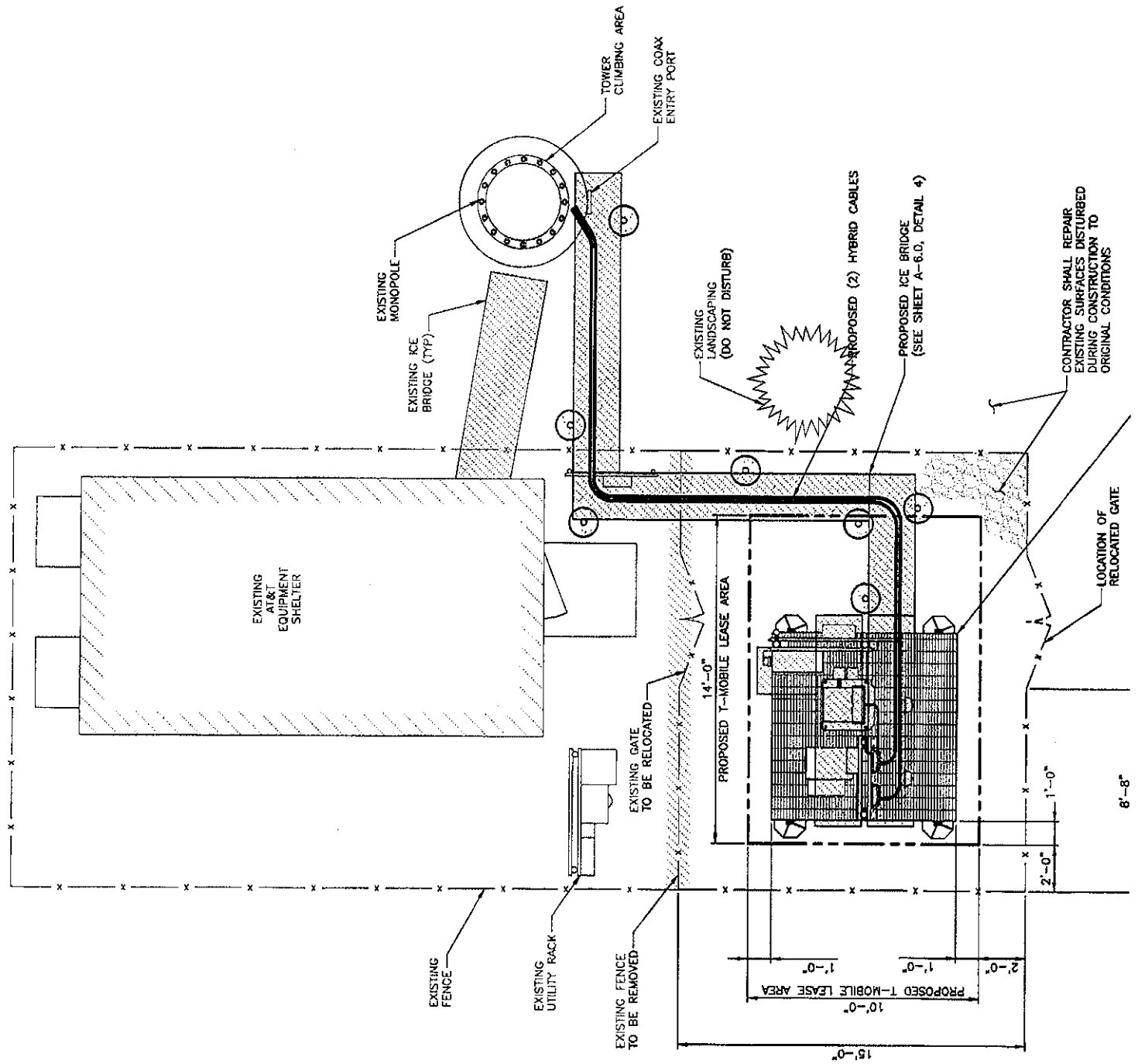
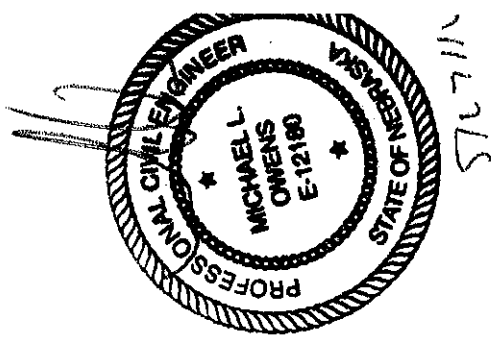


EXHIBIT B

Complaint, *Rowstar, LLC v. Dew*

IN THE CIRCUIT COURT OF THE SECOND JUDICIAL CIRCUIT,
IN AND FOR LEON COUNTY, FLORIDA

ROWSTAR, LLC,
a Florida limited liability company,

Plaintiff,

CASE NO. 2017 CA 001453

v.

MICHAEL DEW, in his official capacity as the
Secretary of Florida Department of Transportation,
and the FLORIDA DEPARTMENT OF TRANSPORTATION,
an agency of the State of Florida,

Defendants.

_____ /

VERIFIED COMPLAINT

Plaintiff, Rowstar, LLC (“Rowstar”), sues Defendants, Michael Dew, in his official capacity as the Secretary of Florida Department of Transportation (the “Secretary”), and the Florida Department of Transportation (“FDOT” or the “Department,” and together with the Secretary, “Defendants”), alleges as follows:

I. PRELIMINARY ALLEGATIONS, JURISDICTION, AND VENUE

1. This is an action seeking declaratory judgment, injunctive relief, and other relief.
2. Venue is proper in this judicial circuit because FDOT has its principal headquarters in Leon County, Florida. Venue is also proper in this circuit pursuant to contractual venue selection clauses in two exclusive Lease and Operating Agreements for Commercial Telecommunications Systems between Rowstar and FDOT dated December 4, 2014 (the “2014 Exclusive Lease”) and December 29, 2016 (the “2016 Exclusive Lease,” and together with the 2014 Exclusive Lease, the “Exclusive Leases”). A true and correct copy of the 2014 Exclusive

Lease is attached as Exhibit 1. A true and correct copy of the 2016 Exclusive Lease is attached as Exhibit 2.

3. All conditions precedent to bringing this action, if any, have occurred or have been excused or waived.

II. THE PARTIES

4. Plaintiff, Rowstar, is a Florida limited liability company. Rowstar is a wholly owned subsidiary of Vertical Bridge NTCF, LLC (“Vertical Bridge”). Rowstar’s office and mailing address is 750 Park of Commerce Drive, Suite 200, Boca Raton, Florida 33487.

5. Defendant, FDOT, is an agency of the State of Florida with the authority and duty to plan and develop the transportation systems serving the people of the State of Florida, which includes entering into contracts and agreements. FDOT’s office and mailing address is 605 Suwanee Street, Tallahassee, Florida 32399-0450.

6. Defendant, Secretary, is the head of FDOT.

III. GENERAL ALLEGATIONS

A. The Exclusive Leases

7. Pursuant to the Exclusive Leases, Rowstar has the exclusive rights to lease all locations within the property defined in each of the Exclusive Leases as the respective “Demised Premises.”

8. The property subject to the 2014 Exclusive Lease, referred to in the 2014 Exclusive Lease as the Demised Premises is defined as follows:

The Demised Premises includes all Department owned right-of-way found in Districts 1, 4, 5, and 7, excluding Florida’s Turnpike Enterprise right-of-way upon which ROWSTAR may lease, sublease and construct, operate, and maintain the Commercial Telecommunications System.

2014 Exclusive Lease at Ex. A.

9. The property subject to the 2016 Exclusive Lease, referred to in the 2016 Exclusive Lease as the Demised Premises is defined as follows:

The Demised Premises includes all Department owned right-of-way found in Districts 2, 3, and 6, excluding Florida's Turnpike Enterprise right-of-way upon which ROWSTAR may lease, sublease and construct, operate, and maintain the Commercial Telecommunications System.

2016 Exclusive Lease at Ex. A.

10. The Districts referred to in the definitions of the Demised Premises in the Exclusive Leases are established pursuant to Florida Statutes, Section 20.23(4)(a). Each District covers multiple Florida counties, such that together all seven (7) Districts cover the entire State of Florida. A true and correct copy of the map depicting the Florida counties within each District is attached as Exhibit 3, available online at www.fdot.gov/info/images/District%20Map%20-%20Lg.jpg.

11. Together, the Exclusive Leases grant to Rowstar the exclusive right to construct, operate and maintain a "Commercial Telecommunications System," and to sublease or license the Demised Premises and the Commercial Telecommunications System, on these FDOT-owned rights-of-way throughout all of Florida, excluding the Florida Turnpike Enterprise right-of-way.

12. In particular, the Exclusive Leases state:

Rowstar's use of the Demised Premises is limited to the leasing of the Demised Premises for the purpose of constructing, operating and maintaining ROWSTAR's Commercial Telecommunications System and subleasing/licensing the Demised Premises and the Commercial Telecommunications System to third party wireless carriers . . . for the installation, operation and maintenance of wireless antenna, coax, and related equipment.

Exclusive Leases at § 3.c.

13. The Commercial Telecommunications System is defined in the Exclusive Leases as "existing and new structures to be constructed, operated and/or maintained by Rowstar, which

Rowstar intends to locate in the Demised Premises, as more fully described in Exhibit B.”

Exclusive Leases at § 1.c. Exhibit B to both of the Exclusive Leases states as follows:

The Commercial Telecommunications System shall be comprised of existing and/or to be constructed structures designed and/or capable of housing/accommodating the placement, collocation, construction, repair, replacement, operation and maintenance of wireless antenna, microwave dishes, radio equipment, coax and other types of related hardware, related equipment, cabinets, shelters, and other ancillary infrastructure necessary for and/or used in the transmission and/or reception of wireless voice, WiFi and data communications.

Exclusive Leases at Ex. B. Finally, the term Commercial Telecommunications System, while including existing and new structures constructed, operated and maintained by Rowstar, also recognizes Rowstar’s ability to sublease to “third party telecommunications and wireless providers of mobile services for the purpose of installing, operating and maintaining telecommunication antenna, coax and related equipment.” Exclusive Leases at § 1.c.

14. On rights-of-way to which FDOT has non-limited access, the Exclusive Leases provide Rowstar with exclusive rights. On rights-of-way to which FDOT has only limited access, the Exclusive Leases grant Rowstar rights which are subject to the pre-existing rights of another Lessee, Lodestar Towers, Inc. (“Lodestar”) under a prior, non-exclusive lease (the “Lodestar Agreement”). *See* Exclusive Leases at § 3.a.

15. Under the Exclusive Leases, Rowstar’s exclusive rights to possession and quiet enjoyment of the Demised Premises for the authorized uses is protected from interference or interruption from anyone acting through FDOT. In particular, the Exclusive Leases state:

The Department further hereby covenants that, subject to the terms of this Agreement, ROWSTAR and its sublessees/licensees shall have peaceful and quiet enjoyment of the Demised Premises for the installation, use and operation of the Commercial Telecommunications System during the full Term and any renewals thereof, without interruption or interference by the Department or any person claiming by, through, or under the Department.

Exclusive Leases at § 3.c.

16. The Exclusive Leases generate revenue for FDOT via a revenue-sharing model, in which FDOT earns a majority of the revenue generated by Rowstar from the use of the Demised Premises. Indeed, in Exhibit E to the Exclusive Leases, the parties jointly projected “Anticipated Annual Lease Payment[s]” exceeding, in the aggregate, \$160 million over the first 10 years of the 50 year term of the Exclusive Leases.

17. The Exclusive Leases were awarded to Rowstar following competitive bidding processes, in which Rowstar was the winning bidder.

18. FDOT and Rowstar entered the Exclusive Leases in 2014 and 2016 respectively.

19. The Exclusive Leases derive significant value from the fact that they give Rowstar the exclusive rights to use the designated right-of-ways.

20. The Exclusive Leases expressly contemplate that Rowstar may sublease or license either the rights-of-way or the Commercial Telecommunications System to other parties as its sublessees or licensees. In the 2016 Exclusive Lease, the definition of Commercial Telecommunications Systems contains additional clarifying language reiterating that the term Commercial Telecommunications Systems extends to “existing and new structures constructed, operated and/or maintained by third parties for the purposes described in Exhibit B.” 2016 Exclusive Lease at § 1.c.

B. FDOT’s Statutory Authority to Lease Its Rights-of-Way

21. FDOT entered into the Exclusive Leases with Rowstar pursuant to express statutory authority located in Florida Statutes, Section 337.251.

22. Section 337.251(1) authorizes FDOT to “lease to public agencies or private entities, for a term not to exceed 99 years, the use of department property, including rights-of-

way, for joint public-private transportation purposes to further economic development in this state and generate revenue for transportation.”

23. Other sections of the Florida Statutes expressly authorize FDOT to generate revenue by leasing its property for the building of “wireless communication facilities,” which are defined as, “Any equipment or facility used to provide service and may include, but is not limited to, antennae, towers, equipment, enclosures, cabling, antenna brackets, and other such equipment. Placing a wireless communications facility on an existing structure does not cause the existing structure to become a wireless communications facility.” FLA. STAT. § 365.172(3)(gg) (2017).

24. One such statutory provision, Section 339.041 (entitled Factoring of Revenues from Leases for Wireless Communication Facilities), expressly states that it is the intent of the Legislature that FDOT generate revenue by leasing FDOT’s property for the building of wireless communication facilities:

The Legislature finds that efforts to increase funding for capital expenditures for the transportation system are necessary for the protection of the public safety and general welfare and for the preservation of transportation facilities in this state. Therefore, it is the intent of the Legislature to:

- (a) Create a mechanism for factoring future revenues received by the department **from leases for wireless communication facilities on department property** on a nonrecourse basis.

FLA. STAT. § 339.041(1) (2017) (emphasis added).

25. Similarly, Section 365.172 provides:

Any other law to the contrary notwithstanding, . . . the Department of Transportation **shall negotiate**, in the name of the state, **leases for wireless communications facilities that provide access to property acquired for state rights-of-way**. On property acquired for transportation purposes, leases shall be granted in accordance with s. 337.251.

FLA. STAT. § 365.172(13)(f) (2017) (emphasis added).

C. The Recent Amendments to Section 337.401 of the Florida Statutes

26. On April 28, 2017, the Florida Legislature passed legislation amending Florida Statutes, Section 337.401 in two separate bills: CS/CS/HB 687 (“HB 687”) and CS/CS/CS/HB 865 (“HB 865”). A true and correct copy of HB 687 is attached as Exhibit 4. A true and correct copy of HB 865 is attached as Exhibit 5.

27. HB 865 was signed into law by the Governor on May 31, 2017, and became effective on July 1, 2017. HB 687 was signed into law by the Governor on June 23, 2017, and became effective on July 1, 2017.

28. HB 865 and HB 687 contain an identical amendment to Section 337.401(1)(a) of the Florida Statutes, which governs FDOT’s authority “to prescribe and enforce reasonable rules or regulations with reference to the placing and maintaining across, on, or within the right-of-way” certain enumerated objects or equipment. Before the amendment, Section 337.401(1)(a) extended to “any electric transmission, telephone, telegraph, or other communications services lines” among other enumerated items. The amendment replaced the term “telephone” with the terms “voice” and “data” in the series modifying the phrase “communications services lines,” and also added, within the grouping of services lines, the phrase “wireless facilities.”

29. Thus, as amended, Section 337.401(1)(a) reads as follows:

The department and local governmental entities, referred to in this section and in ss. 337.402, 337.403, and 337.404 as the “authority,” that have jurisdiction and control of public roads or publicly owned rail corridors are authorized to prescribe and enforce reasonable rules or regulations with reference to the placing and maintaining across, on, or within the right-of-way limits of any road or publicly owned rail corridors under their respective jurisdictions any electric transmission, **voice and data,** telegraph, or other communications services lines **or wireless facilities;** pole lines; poles; railways; ditches; sewers; water, heat,

or gas mains; pipelines; fences; gasoline tanks and pumps; or other structures referred to in this section and in ss. 337.402, 337.403, and 337.404 as the “utility.”

(emphasis added to reflect language inserted by HB 865 and HB 687).

30. HB 865 and HB 687 do not amend any Section of the Florida Statutes authorizing FDOT to lease access to its rights-of-way, namely Florida Statutes, Sections 337.251, 339.041, and 365.172(13)(f).

31. The authority prescribed in HB 865 and HB 687 is permissive, not mandatory. The statute provides a grant of authority to FDOT to issue utility permits, but it does not mandate issuance of such permits by FDOT. Section 337.401(2) states that FDOT “may grant to any person who is a resident of this state, or to any corporation which is organized under the laws of this state or licensed to do business within this state, the use of a right-of-way for the utility in accordance with such rules or regulations as the authority may adopt.” FLA. STAT. § 337.401(2) (2017) (emphasis added).

32. Such permissive authority to issue utility permits does not deprive FDOT of the authority to comply with its Exclusive Leases. Nor does it purport to require FDOT to issue utility permits in violation of the Exclusive Leases.

33. HB 687 further amended Section 337.401 by adding a new subsection, codified as Section 337.401(7), and referred to as the Advanced Wireless Infrastructure Deployment Act (“AWIDA”).

34. HB 687 prescribes limitations on the regulation of the placement of “wireless facilities” on public rights-of-way by government authorities, but such prescriptions are not applicable to FDOT, which is expressly carved out from the definition of “authority,” to which all such prescriptions apply.

35. In particular, HB 687's amendment to Section 337.401(7)(c) defines "authority," as follows:

"Authority" means a county or municipality having jurisdiction and control of the rights-of-way of any public road. **The term does not include the Department of Transportation. Rights-of-way under the jurisdiction and control of the department are excluded from this subsection**

(emphasis added).

36. The plain meaning of this exclusion of FDOT from the definition of "authority" is clear. None of the requirements imposed on "authorities" applies to FDOT.

37. The legislative history of HB 687 and HB 865 demonstrates that the effect of this carve out of FDOT was specifically to avoid any conflict between the legislation and the Exclusive Leases between FDOT and Rowstar as well as to avoid any negative impact on FDOT's revenues under those Exclusive Leases.

38. The Florida House Final Bill Report for HB 687, issued after the bill was passed by both the House and Senate, contains the following language:

Collocation of Wireless Communications Facilities in DOT Rights-of-Way

With respect to property acquired for state rights-of-way, the DOT is responsible for negotiating leases that provide access for wireless communications facilities. Payments required under such leases must be reasonable and reflect the market rate for the use of the state government-owned property. DOT is authorized to adopt rules for granting such leases, including terms and conditions.

The DOT has entered into three competitively bid leases that allow the lessee to place wireless facilities on the DOT's rights-of-way or to sublease those rights to a third-party for the same purpose. The DOT indicates that it derives an income stream from each of these agreements.

House of Representatives Final Bill Report at 3 & n.15, H.B. 687, (May 10, 2017)

<https://www.flsenate.gov/Session/Bill/2017/687/Analyses/h0687z.EUS.PDF> (internal citations

and footnotes omitted) (the “May 10 Final House Report”). A true and correct copy of the May 10 Final House Report is attached as Exhibit 6. The Report goes on to specifically identify the two Exclusive Leases and the Lodestar Agreement as the “three competitively bid leases.” *See id.* at n.17.

39. Before the language carving out FDOT was added to the bill, the Florida Senate issued a Bill Analysis and Fiscal Impact Statement analyzing potential issues with the effect of HB 687’s Senate companion (designated “SB 596”). *See* Bill Analysis and Impact Statement Report, S.B. 596, (March 24, 2017) <https://www.flsenate.gov/Session/Bill/2017/596/Analyses/2017s00596.pre.go.PDF> (the “March 24 Senate Report”). A true and correct copy of the March 24 Senate Report is attached as Exhibit 7.

40. Among the issues discussed was the concern that this early version of the bill, (which did not carve out FDOT) would conflict with the Exclusive Leases between FDOT and Rowstar. *See id.* at 14. In particular, the March 24 Senate Report states:

The bill may conflict with the requirements of s. 365.172(12)(f), F.S., that provides the DOT the ability to generate revenue via competitive leases of its right-of-way. The DOT currently receives revenue of \$1.8 million from one of its competitively bid leases for space on agency owned poles it its right-of-way. These DOT leases [*sic*] have the exclusive contractual right to sublease to other entities, including wireless telecommunications providers. If the existing agreements are terminated or rendered void if the bill passes, the DOT will no longer collect \$1.8 million in revenue for the 2018-2019 fiscal year and approximately that amount for each subsequent fiscal year. Under the bill, it appears that these leases would lose their exclusivity. The issue of impairment of contract might result in litigation for these leases.

Id.

41. On or about March 27, 2017, SB 596 was changed to include the definition of “authority” that was ultimately included in the bill as passed by the House and Senate, which carves out FDOT from the definition of “authority.” Thus, on March 29, 2017, the Florida Senate issued an updated Bill Analysis and Fiscal Impact Statement. *See* Bill Analysis and Impact Statement Report, S.B. 596, (March 29, 2017) <https://www.flsenate.gov/Session/Bill/2017/596/Analyses/2017s00596.go.PDF> (the “March 29 Senate Report”). A true and correct copy of the March 29 Senate Report is attached as Exhibit 8. The March 29 Senate Report noted that the bill now contained the definition of “authority” which “does not include the DOT, and its rights-of-way are excluded from the bill.” *Id.* at 8. With this change the March 29 Senate Report dropped the reference to any potential conflicts with the Exclusive Leases or to any negative fiscal impact from the loss of revenue expected to be caused by passage of the bill. *See id.* at 15 (omitting any reference to the Exclusive Leases in the section entitled Fiscal Impact Statement). The March 29 Senate Report continued to refer to the Exclusive Leases (*id.* at 3–4), but it simply reflected that exclusion of FDOT from the definition of “authority” removed any conflict with the Exclusive Leases and therefore any adverse impact on the revenues from the Exclusive Leases.

42. No Senate or House of Representative Analyses issued after March 29, 2017 contained any reference to a conflict with the Exclusive Leases or a loss of revenue to FDOT from the Exclusive Leases as a result of passage of the bills.

43. Were the Court to interpret the statutory amendments as requiring FDOT to issue utility permits, such interpretation would defeat the clear intent of the Legislature as reflected both in the plain language of the amendments as well as their legislative history.

44. Further, were the Court to interpret the amendments as conflicting with the Exclusive Leases (contrary to the intent of the Legislature), the amendments would rewrite the Exclusive Leases to change Rowstar's substantive rights. This change would unconstitutionally impair Rowstar's pre-existing contract rights to the exclusive use of the right-of-ways under the Exclusive Leases in violation of the Contracts Clauses of the Florida and United States Constitutions. U.S. CONST. art. I, § 10; FLA. CONST. art. I, § 10.

45. In addition to the carve-out of FDOT, the Legislature also carved out from HB 687 any impact on the construction of structures, such as cellular towers, which make up the "Commercial Telecommunications System" to which the Exclusive Leases apply.

46. In a subsection codified at Florida Statutes, Section 337.401(7)(b)(12), HB 687 defines the phrase "wireless facilities," which term was added to Section 337.401(1)(a) in both bills, specifically to exclude structures. That subsection defines "wireless facilities," as follows:

"Wireless facility" means equipment at a fixed location which enables wireless communications between user equipment and a communications network, including radio transceivers, antennas, wires, coaxial or fiber-optic cable or other cables, regular and backup power supplies, and comparable equipment, regardless of technological configuration, and equipment associated with wireless communications. The term includes small wireless facilities. **The term does not include:**

a. **The structure or improvements on, under, within, or adjacent to the structure on which the equipment is collocated;**

b. Wireline backhaul facilities; or

c. Coaxial or fiber-optic cable that is between wireless structures or utility poles or that is otherwise not immediately adjacent to or directly associated with a particular antenna

(emphasis added).

47. This is the only definition of the phrase “wireless facilities” found anywhere within the Florida Statutes.

48. As defined in HB 687 and Section 337.401(7), as amended, the phrase “wireless facilities” specifically excludes the “structure[s] on which such equipment is collocated,” as well as the improvements to real property “on, under, within, or adjacent to the structures.” *Id.*

C. FDOT’s Failure to Give Adequate Assurance of Performance Under the Exclusive Leases

49. Prior to the passage of HB 865 and HB 687, while such bills were still being debated by the Florida Legislature, FDOT sent a letter to Rowstar dated April 20, 2017, informing Rowstar that FDOT proposed terminating the Exclusive Leases and issuing utility permits to Rowstar and others without compensation in the event the Legislature passed the proposed amendment to Section 337.401. A true and correct copy of FDOT’s letter dated April 20, 2017 is attached as Exhibit 9.

50. The Exclusive Leases entitle Rowstar to exclusive rights to construct, operate and maintain the Commercial Telecommunications System, and to sublease or license the Demised Premises and Commercial Telecommunications System.

51. Pursuant to the Exclusive Leases, both before and after the passage of HB 865 and HB 687, FDOT may not issue utility permits to third parties for constructing, operating or maintaining the Commercial Telecommunications System, or for subleasing or licensing the Demised Premises and the Commercial Telecommunications System, in any FDOT rights-of-way in all FDOT Districts, excluding the Florida Turnpike Enterprise right-of-way.

52. If FDOT issues utility permits to third parties to construct or use the Commercial Telecommunications Systems within FDOT rights-of-way, then Rowstar will be deprived of the exclusivity for which it contracted in the Exclusive Leases. Further, Rowstar's rights under the Exclusive Leases are essentially rendered futile if the same rights that Rowstar must pay to exercise via the Exclusive Leases are available to any competitor free of charge via a utility permit mechanism.

53. Were FDOT to issue a utility permit purporting to authorize a third party to construct, operate, maintain, sublease, or license the Commercial Telecommunications System, this would prevent FDOT from performing its covenant to provide Rowstar with "peaceful and quiet enjoyment of the Demised Premises for the installation, use and operation of the Commercial Telecommunications System during the full Term and any renewals thereof, without interruption or interference by the Department **or any person claiming by, through, or under the Department.**" Exclusive Leases at § 3.c. (emphasis added).

54. None of the statutory amendments in HB 865 or HB 687 requires or permits termination of the Exclusive Leases, or excuses FDOT from performing under the Exclusive Leases. However, to the extent the amendments are construed to terminate or otherwise interfere with Rowstar's exclusive rights under the Exclusive Leases, the amendments unconstitutionally impair Rowstar's pre-existing rights and are void.

55. HB 865 does not purport to repeal any of the sections of the Florida Statutes providing FDOT authority to lease access to its rights-of-way. *See* FLA. STAT. §§ 337.251, 339.041, 365.172(13)(f) (2017). Similarly, HB 687 does not purport to repeal any of the sections of the Florida Statutes providing FDOT authority to lease access to its rights-of-way. *See* FLA. STAT. §§ 337.251, 339.041, 365.172(13)(f) (2017).

56. FDOT is expressly carved out of the definition of an “authority” in HB 687, and therefore none of the requirements imposed on “authorities” by HB 687 have any application to FDOT.

57. Further, nothing in HB 687 or HB 865 purports to require or allow FDOT to issue utility permits to third parties for the construction or use of the Commercial Telecommunications System. Indeed, the definition of “wireless facilities” in HB 687 expressly excludes structures. *See* FLA. STAT. 337.401(7)(b)(12) (2017).

58. Importantly, HB 865’s (and HB 687’s) amendment to Section 337.401(1)(a) could have, but **does not**, include the phrases “wireless support structure” or “wireless communications facility,” both of which would have included structures within their definition. A “wireless support structure” is defined in HB 687, codified in Section 337.401(7)(b)(15) as “**a freestanding structure**, such as a monopole, a guyed or **self-supporting tower**, or another existing or proposed structure **designed to support or capable of supporting wireless facilities**. The term does not include a utility pole.” Similarly, a “wireless communications facility” is already defined in existing law as “any equipment or facility used to provide service and may include, but is not limited to, antennae, towers, equipment enclosures, cabling, antenna brackets, and other such equipment.” FLA. STAT. § 365.172(3)(gg) (2017). Had the Legislature intended to include structures within the scope of Section 337.041(1)(a), the language was available using either of those phrases under both existing law and the amendment itself. Instead, the Legislature clearly and unambiguously chose not to include structures within Section 337.401(1)(a) by choosing the term “wireless facilities”.

59. The Legislature’s clearly-expressed intent that wireless facilities do not include structures is consistent with other provisions of the existing statutory scheme. For example,

Section 338.235(3), Florida Statutes, recognizes that wireless facilities are placed “by any **wireless provider of mobile services** as defined in 47 U.S.C. s. 153(27) or s. 332(d), **and any telecommunications company** as defined in s. 364.02” (emphasis added). A “telecommunications company” is defined in Section 364.02 as “every corporation, partnership, and person and their lessees, trustees, or receivers appointed by any court whatsoever, and every political subdivision in the state, **offering two-way telecommunications service to the public for hire** within this state by the use of a telecommunications facility. . . .” (emphasis added). Cell tower owners and developers, like Rowstar and Vertical Bridge, are not “wireless providers” or “telecommunications companies” because they do not provide two-way telecommunications service to the public for hire. Rather, they provide infrastructure to the companies that do offer such services to the public.

60. On May 8, 2017, Rowstar responded to FDOT’s April 20, 2017 letter explaining that nothing in the statutory amendments required or permitted FDOT to terminate the Exclusive Leases or excused FDOT’s performance, and seeking adequate assurance of performance under the Exclusive Leases from FDOT. A true and correct copy of Rowstar’s May 8, 2017 letter to FDOT is attached as Exhibit 10.

61. Subsequently, on May 24, 2017, Rowstar representatives met with the General Counsel and other representatives of FDOT, and again sought assurance that FDOT would perform its obligations under the Exclusive Leases. Finally, on June 30, 2017, a representative of Rowstar spoke with a representative of FDOT seeking the same assurance.

62. In particular, Rowstar sought assurance from FDOT that FDOT would not issue utility permits to any third parties for the construction or use of the Commercial

Telecommunications System in FDOT rights-of-way located in any FDOT District, excluding the Florida Turnpike Enterprise right-of-way.

63. To date, FDOT has not provided assurance that it intends to perform under the Exclusive Leases by denying utility permits for the construction or use of the Commercial Telecommunications System.

64. To the contrary, in the FDOT Letter, again at the May 24, 2017 meeting and on the June 30, 2017 telephone call, FDOT representatives have expressed that FDOT is considering issuing utility permits to third parties to construct, operate or maintain the Commercial Telecommunications System, or to sublease or license the Demised Premises and the Commercial Telecommunications System.

65. The uncertainty surrounding FDOT's intention to perform under the Exclusive Leases has caused and is causing ongoing harm to Rowstar. In particular, several prospective Rowstar sublessees have advised Rowstar that they are interested in subleasing the right to place equipment on Rowstar's Commercial Telecommunications System in the FDOT rights-of-way, but because of the uncertainty over whether FDOT will honor Rowstar's valid and exclusive rights to construct and use the Commercial Telecommunications System, such prospective sublessees have refrained from finalizing subleases pending clarity on whether FDOT will perform under the Exclusive Leases. Should the uncertainty continue, such potential sublessees may simply choose to locate their equipment on structures outside the FDOT rights-of-way, such as on other commercial cellular towers located on buildings, rooftops of buildings or as free-standing structures on private land, or may simply seek utility permits in contravention of Rowstar's exclusive rights under the Exclusive Leases.

66. Moreover, such uncertainty, if it continues, will cause irreparable damage to Rowstar by detrimentally harming Rowstar's reputation and goodwill. Rowstar's limited customer base, consisting of four major wireless carriers, will continue to lose trust in Rowstar's ability to lease, sublease or license any Commercial Telecommunications System not only subject to the Exclusive Leases, but also in Florida or nationally. Losing the trust of any one of these four major wireless carriers substantially impairs Rowstar's business and revenue.

COUNT I:
DECLARATORY JUDGMENT

67. Rowstar reincorporates and realleges the allegations set forth in paragraphs 1 through 66 as if fully set forth herein.

68. This is an action for declaratory judgment pursuant to Florida Statutes, Section 86.011 *et seq.*

69. Rowstar, as grantee of exclusive rights to lease the Demised Premises, and FDOT as grantor, are parties to the Exclusive Leases, which are valid and enforceable contracts.

70. Existing law authorizes and directs FDOT to lease its rights-of-way to Rowstar in order to generate revenue.

71. FDOT's issuance of utility permits to third parties to construct, operate or maintain the Commercial Telecommunications System, or sublease or license the Demised Premises or Commercial Telecommunications System, in FDOT rights-of-way located in any FDOT District, excluding the Florida Turnpike Enterprise right-of-way, would constitute a breach of the Exclusive Leases.

72. Based on FDOT's correspondences, failure to provide requested adequate assurance of compliance with the Exclusive Lease, and other conduct, there is an imminent threat that FDOT will issue one or more of the aforementioned permits.

73. Issuance of one or more of the aforementioned permits by FDOT would constitute a breach of the Exclusive Leases.

74. Such a breach by FDOT would cause irreparable harm to Rowstar by permitting third parties to encroach on Rowstar's contracted-for exclusive rights and interfere with Rowstar's right to quiet enjoyment of the Demised Premises for which Rowstar would have no adequate remedy at law.

75. Nothing in the recent statutory amendments requires FDOT to breach the Exclusive Leases or to act in a way that is inconsistent with the Exclusive Leases. Were such breach or inconsistent action by FDOT required by the statutes, it would constitute an unconstitutional impairment of the Exclusive Leases pursuant to Article I, Section 10 of the Florida and United States Constitutions, rendering the statutes void.

76. A bona fide, actual, concrete, and continuing controversy exists between Rowstar on one hand, and FDOT on the other.

77. The position taken by FDOT has created an uncertainty that is substantially likely to affect Rowstar's legal rights, and affect the ongoing Exclusive Leases and any subleases.

78. The parties have adverse positions in this action, and the resolution of this live controversy requires a determination of the parties' rights and obligations under the Exclusive Leases and existing law.

79. All of the persons or entities with an interest in this matter are presently and properly before this Court.

80. The relief sought herein is not a mere advisory opinion, legal advice or an answer to a question propounded for curiosity, and does not involve an abstract disagreement.

WHEREFORE, as to Count I of its Complaint, Rowstar respectfully requests the following relief:

- a. A declaratory judgment pursuant to Florida Statutes, Section 86.011 *et seq.* determining that:
 - i. FDOT is not required by law to issue utility permits or otherwise authorize third parties to construct or use the Commercial Telecommunications System in the FDOT rights-of-way located in any FDOT District, excluding the Florida Turnpike Enterprise right-of-way ;
 - ii. FDOT would breach the Exclusive Leases if it were to issue utility permits or otherwise authorize third parties to construct or use the Commercial Telecommunications System in the FDOT rights-of-way located in any FDOT District, excluding the Florida Turnpike Enterprise right-of-way; and
 - iii. FDOT is contractually bound to continue preserving Rowstar's exclusive rights to lease the FDOT rights-of-way in every FDOT District, excluding the Florida Turnpike Enterprise right-of-way, under the terms and conditions set forth in the Exclusive Leases for the remaining term of the Exclusive Leases.
- b. Preliminary and permanent injunctive relief pursuant to Florida Statutes, Section 86.061 enjoining Defendants from:
 - i. Issuing utility permits or otherwise authorizing third parties to construct or use a Commercial Telecommunications System in the FDOT rights-of-way located in any FDOT District, excluding the Florida Turnpike Enterprise right-of-way;

- ii. Interfering with, or permitting any third party to interfere with, Rowstar's exclusive rights to possession and quiet enjoyment of the Commercial Telecommunications System in the FDOT rights-of-way located in any FDOT District, excluding the Florida Turnpike Enterprise right-of-way; and
- c. Costs incurred in enforcing the Exclusive Leases; and
- d. Such other and further relief that the Court deems just and proper.

COUNT II:
DECLARATORY JUDGMENT

81. Rowstar reincorporates and realleges the allegations set forth in paragraphs 1 through 66 as if fully set forth herein.

82. This is an action for declaratory judgment pursuant to Florida Statutes, Section 86.011 *et seq.* and is *pled in the alternative to Count I.*

83. FDOT and Rowstar entered the Exclusive Leases in 2014 and 2016 respectively.

84. The Exclusive Leases gave Rowstar the exclusive right to maintain Commercial Telecommunication Systems on the Demised Premises.

85. In 2017, the legislature made certain amendments -- HB 687 and HB 865 -- to section 337.401 of the Florida Statutes, and these amendments were signed into law.

86. HB 687 and HB 865 have no effect on the Exclusive Leases, and Rowstar retains the exclusive right (which rights may be assigned) to maintain a Commercial Telecommunications System on the Demised Property.

87. If however the amendments enacted in 2017 are construed to alter Rowstar's pre-existing rights under the Exclusive Leases, including the exclusive right to maintain a Commercial Telecommunication System, the amended version of section 337.401

unconstitutionally impairs Rowstar's rights under the Exclusive Leases contrary to Article I, Section 10 of the Florida and United States Constitutions.

88. A bona fide, actual, concrete, and continuing controversy exists between Rowstar on one hand, and FDOT on the other.

89. The position taken by FDOT has created an uncertainty that is substantially likely to affect Rowstar's legal rights, and affect the ongoing Exclusive Leases and any subleases.

90. The parties have adverse positions in this action, and the resolution of this live controversy requires a determination of the parties' rights and obligations under the Exclusive Leases and existing law.

91. All of the necessary persons or entities in this matter are presently and properly before this Court.

92. The relief sought herein is not a mere advisory opinion, legal advice or an answer to a question propounded for curiosity, and does not involve an abstract disagreement.

WHEREFORE, as to Count II of its Complaint, Rowstar respectfully requests the following relief:

- a. A declaratory judgment pursuant to Florida Statutes, Section 86.011 *et seq.* determining that:
 - i. HB 687 and HB 865 have no effect on the Exclusive Leases, and Rowstar retains the exclusive right (which rights may be assigned) to maintain a Commercial Telecommunications System on the Demised Property.
 - ii. If HB 687 or HB 865 is applicable to and has an effect on the Exclusive Leases, the amendments to section 337.401 of the Florida Statutes that alter Rowstar's exclusive rights to maintain a Commercial Telecommunications

System on the Demised Property unconstitutionally impair Rowstar's contract rights under the Exclusive Leases contrary to Article I, Section 10 of the Florida and United States Constitutions and are void.

- b. Preliminary and permanent injunctive relief pursuant to Florida Statutes, Section 86.061 enjoining Defendants from:
 - i. Issuing utility permits or otherwise authorizing third parties to construct or use a Commercial Telecommunications System in the FDOT rights-of-way located in any FDOT District, excluding the Florida Turnpike Enterprise right-of-way;
 - ii. Interfering with, or permitting any third party to interfere with, Rowstar's exclusive rights to possession and quiet enjoyment of the Commercial Telecommunications System in the FDOT rights-of-way located in any FDOT District, excluding the Florida Turnpike Enterprise right-of-way; and
- c. Costs incurred in enforcing the Exclusive Leases; and
- d. Such other and further relief that the Court deems just and proper.

COUNT III:
PRELIMINARY AND PERMANENT INJUNCTIVE RELIEF

93. Rowstar reincorporates and realleges the allegations set forth in paragraphs 1 through 66 as if fully set forth herein.

94. This is an action for preliminary and permanent injunction pursuant to the rights expressly and clearly granted to Rowstar under the Exclusive Leases.

95. Rowstar, as grantee of exclusive rights to lease the Demised Premises, and FDOT as grantor of such rights, are parties to the Exclusive Leases, which are valid and enforceable contracts.

96. Existing law authorizes FDOT to lease its rights-of-way to Rowstar in order to generate revenue.

97. FDOT's issuance of utility permits to third parties to construct, operate or maintain the Commercial Telecommunications System, or to sublease or license the Demised Premises or Commercial Telecommunications System, on FDOT rights-of-way located in any FDOT District, excluding the Florida Turnpike Enterprise right-of-way, would constitute a breach of the Exclusive Leases.

98. Such a breach by FDOT would cause irreparable harm to Rowstar by permitting a third party to encroach on Rowstar's contracted-for exclusive rights and interfere with Rowstar's right to quiet enjoyment of the Demised Premises for which Rowstar would have no adequate remedy at law.

99. Nothing in the recent statutory amendments requires FDOT to breach the Exclusive Leases or to act in a way that is inconsistent with the Exclusive Leases. Were such breach or inconsistent action by FDOT required by the statutes, it would constitute an unconstitutional impairment of the Exclusive Leases pursuant to Article I, Section 10 of the Florida and United States Constitutions, rendering the statutes void.

100. Rowstar has a substantial likelihood of success on the merits of this claim, and injunctive relief would serve and not be adverse to the public interest.

WHEREFORE, as to Count III of its Complaint, Rowstar respectfully requests the following relief:

- a. Preliminary and permanent injunction enjoining Defendants from:
 - i. Issuing utility permits or otherwise authorizing third parties to construct or use a Commercial Telecommunications System in the FDOT rights-of-way

- located in any FDOT District, excluding the Florida Turnpike Enterprise right-of-way;
- ii. Interfering with, or permitting any third party to interfere with, Rowstar's exclusive rights to possession and quiet enjoyment of the Commercial Telecommunications System in the FDOT rights-of-way located in any FDOT District, excluding the Florida Turnpike Enterprise right-of-way; and
- b. Costs incurred in enforcing the Exclusive Leases; and
- c. Such other and further relief that the Court deems just and proper.

Respectfully submitted this 12th day of July, 2017.

/s/ Robert N. Clarke, Jr.

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VERIFICATION

Under penalty of perjury, I declare that I have read the foregoing, and the facts alleged therein are true and correct to the best of my knowledge and belief.

Rowstar, LLC, a Florida limited liability company

By: *Michael Romaniw*

Print Name: Michael Romaniw

Title: CFO

STATE OF FLORIDA

COUNTY OF PALM BEACH

Sworn to and subscribed before me this 11th day of July, 2017, by Michael Romaniw, as CFO of Rowstar, LLC, a Florida limited liability company, who is personally known to me or who has produced _____ as identification.

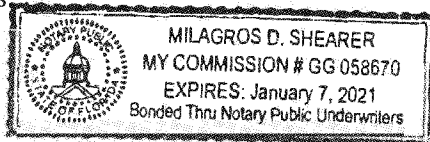
Notary: *Milagros D. Shearer*

[NOTARIAL SEAL]

Print Name: Milagros D. Shearer

Notary Public, State of FL

My commission expires:



EXHIBIT

1

STATE OF FLORIDA, DEPARTMENT OF TRANSPORTATION

LEASE AND OPERATING AGREEMENT

FOR COMMERCIAL TELECOMMUNICATIONS FACILITIES

THIS LEASE AND OPERATING AGREEMENT FOR COMMERCIAL TELECOMMUNICATIONS FACILITIES ("Agreement"), effective this 4th day of December, 2014, between the **STATE OF FLORIDA, DEPARTMENT OF TRANSPORTATION**, an agency of the State of Florida, as lessor ("Department"), and **ROWSTAR, LLC**, a Florida limited liability company, as lessee ("ROWSTAR")(each a "Party" and collectively referred to as the "Parties").

RECITALS

A. The Department is authorized by section 337.251, Florida Statutes, to lease the use of Department property to public agencies or private entities to further economic development and generate revenue for transportation.

B. The Department advertised a Request for Proposals ("RFP") on January 31, 2014 for the leasing of rights-of-way and real property owned by the Department in Districts 1, 4, 5, and 7, excluding the Florida's Turnpike Enterprise rights-of-way, to be used for the purposes of constructing, operating, and maintaining commercial telecommunications facilities.

C. Two proposals were submitted in response to the RFP, and ROWSTAR's proposal was determined to be responsive to the RFP and selected as the best value proposal for the Department. The Department is willing to lease to ROWSTAR portions of its rights-of-way described in this Agreement and for the purposes stated in this Agreement.

AGREEMENT

In consideration of the mutual covenants and promises set forth in this Agreement and for other good and valuable consideration, the receipt and sufficiency of which is acknowledged, the Parties agree that the foregoing recitals are true and correct and are incorporated as part of this Agreement and the Parties further agree as follows:

1. DEFINITIONS

As used herein, the following terms shall have the meaning indicated unless the context requires a different meaning:

a. **"Agreement"** shall mean this Lease and Operating Agreement for Commercial Telecommunications Facilities.

b. **"Clear Zone"** shall mean the lateral area adjacent to roadway travel lanes which must remain unobstructed, as determined by the Department in accordance with its applicable standards.

c. **"Commercial Telecommunications System"** shall mean existing and new structures to be constructed, operated and/or maintained by ROWSTAR, which ROWSTAR intends to locate in the Demised Premises, as more fully described in Exhibit B. Unless the context requires otherwise, in this Agreement the term shall mean specifically the portions of the Commercial Telecommunications System that are located within the Demised Premises, which may include existing and new structures constructed, operated and/or maintained by ROWSTAR and subleased by ROWSTAR to third party telecommunications and wireless providers of mobile services for the purpose of installing, operating and maintaining telecommunication antenna, coax and related equipment. The term "Commercial Telecommunications System" may have a singular or a collective meaning depending upon the context with which it is used. By way of example, the term may refer only to a specific structure that is a part of the Commercial Telecommunications System located within the Demised Premises or it may refer to the entire Commercial Telecommunications System that may be developed within the Demised Premises throughout the term of this Agreement.

d. **"Contract Manager"** shall mean the Department's Contract Manager responsible for overseeing the administration of this Agreement for the Department.

e. **"Default" or "Event of Default"** shall mean an event described in Paragraph 15.b.

f. **"Demised Premises"** shall mean the rights-of-way described and depicted in **Exhibit A**, as such description may be amended in accordance with this Agreement.

g. **"Department"** shall mean the State of Florida, Department of Transportation, an agency of the state.

h. **"Effective Date"** shall mean the date on which this Agreement has been fully executed and delivered to both Parties.

i. **"Engineering Drawings"** shall mean the construction drawings and plans and specifications for construction of the Commercial Telecommunications System to be located within the Demised Premises, including (but not limited to) site plans depicting the locations of the vertical support structures and other facilities, point(s) of access, and utility locations, all as prepared or caused to be prepared by ROWSTAR and approved by the Department in accordance with this Agreement.

j. **"Force Majeure"** shall mean an event caused by natural disaster; act of God; act of terrorism; or an act of military authority, war, or civil disorder; provided that such causes are beyond the reasonable control and without the willful act, fault, failure or negligence of the party whose performance is affected by the Force Majeure event; and, provided, further, that

the party whose performance is affected by the Force Majeure event continues to make reasonable efforts to perform.

k. **"Hazardous Materials"** shall mean petroleum, or any fraction thereof, asbestos, polychlorinated biphenyls, or any other substance identified either as a "hazardous substance," "hazardous waste," "pollutant," "contaminant" or similar term in any applicable federal, state or local law or regulation, as such law or regulations may be now or hereafter amended.

l. **"Leasehold Mortgage"** is a mortgage or other similar security agreement given to any Leasehold Mortgagee of the leasehold interest of ROWSTAR under this Agreement, and shall be deemed to include any mortgage or trust indenture under which this Agreement shall have been encumbered, and including any and all renewals, modifications, advances, additions, and extensions of or to a Leasehold Mortgage.

m. **"Leasehold Mortgagee"** is a public or private lending source or institution, federal, state, county or municipal governmental agency or bureau, bank, savings and loan, pension fund, insurance company, real estate investment trust, tax credit syndication entity, or other real estate investment or lending entity, savings bank, whether local, national or international, and/or the holder of any purchase money mortgage given back to a transferor, that is or becomes the holder, mortgagee or beneficiary under any Leasehold Mortgage and the successors or assigns of such holder, mortgagee or beneficiary, and shall be deemed to include, without limitation, the trustee under any such trust indenture and the successors or assigns of such trust. A parent, subsidiary, affiliate, division, or entity controlling, controlled by, or under common control with ROWSTAR shall not be a "Leasehold Mortgagee" for the purposes of this Agreement.

n. **"Lodestar Agreement"** means that Lease and Operating Agreement for Commercial Wireless Telecommunications between the Department and Lodestar Towers, Inc., as amended.

o. **"Minimal Landscaping Requirements"** shall mean landscaping required by Department, which may include plantings around the base of vertical support structures for the Commercial Telecommunications System consistent with Department current landscaping requirements for Department rights-of-way.

p. **"Project"** means the design, construction, operation and maintenance of a specific portion of the Commercial Telecommunications System located within the Demised Premises.

q. **"Project Manager"** shall mean the project manager and contact person that ROWSTAR is required to have at all times under Paragraph 7.a.

r. **"Qualified Professionals"** shall mean professionals providing services hereunder who are licensed in their respective disciplines by the State of Florida, Department of Business and Professional Regulation and who hold any other licensures required by any governmental authority with jurisdiction over the Commercial Telecommunications System.

s. **"ROWSTAR"** shall mean ROWSTAR, LLC, a Florida limited liability company.

t. **"Term"** shall mean the term of this Agreement as set forth in Section 5. Below.

u. **"Work"** shall mean all labor, materials and incidentals required for the construction, installation and testing of the Commercial Telecommunications System, including superintendence, use of equipment and tools, and all services and responsibilities prescribed or implied that are necessary for the complete performance by ROWSTAR of the construction requirements under this Agreement at ROWSTAR's sole expense.

2. AGREEMENT; LEGAL AUTHORITY; DETERMINATIONS

a. **The Agreement.** This Agreement, together with its exhibits and all approved Engineering Drawings, sets forth the terms and conditions upon which the Department leases to ROWSTAR certain Department property. ROWSTAR shall comply with, and shall cause its employees, contractors, subcontractors, and agents to comply with, all terms and conditions set forth herein.

b. **Legal Authority for Agreement.** This Agreement is entered into pursuant to the Department's express legislative authority under Section 337.251, Florida Statutes.

c. **Department Determinations.** As of the date of its execution of this Agreement, the Department makes the following determinations:

1. The lease of Department property pursuant to this Agreement will constitute a lease of Department property for commercial purposes that will further economic development in the state and generate revenue for transportation.
2. The reservations, restrictions, and conditions in this Agreement are necessary to ensure adequate protection for safe and efficient operation and maintenance of all affected transportation and utility facilities, the adequacy of traffic flow on the affected rights-of-way, and the full use of existing and future state transportation facilities.
3. The commercial use of the Demised Premises pursuant to the terms of this Agreement will not interfere with the state's primary transportation needs or with present or future utility needs for the Demised Premises.
4. The commercial use of the Demised Premises pursuant to the terms of this Agreement will serve and further, and will not be contrary to, the best interests of the public.
5. Under this Agreement, the Demised Premises will have a permanent transportation use, specifically commercial telecommunications facilities that are related to the responsibilities of the Department, and the Commercial Telecommunications System will constitute a use of the

Demised Premises for such a purpose. Therefore, the Demised Premises are not available for sale as surplus property.

6. This Agreement constitutes a complex lease transaction involving extensive capital improvements by ROWSTAR. Therefore, under Subsection 337.251(4) of Florida Statutes, this Agreement is not the type of lease governed by Section 337.25, Florida Statutes.
7. The lease of the Demised Premises pursuant to the terms of this Agreement:
 - (a) Is in the public's best interest;
 - (b) Does not require that state funds be used; and
 - (c) Has adequate safeguards in place to ensure that additional costs are not borne and service disruptions are not experienced by the traveling public and residents of the state in the event of default by ROWSTAR or upon termination or expiration of this Agreement.

**3. DEMISE, DESCRIPTION, AND USE OF DEMISED PREMISES;
PROHIBITION ON LIENS; ACCESS; LIMITATIONS ON ROWSTAR'S RIGHTS**

a. **Grant of Lease, Description of the Demised Premises.** Upon the terms and conditions of this Agreement, the Department hereby grants to ROWSTAR for the uses described in Paragraph 3.c. below, and for the Term, as defined in Section 5, the following leasehold rights;

1. the exclusive right to lease the non-limited access rights-of-way within the Demised Premises located in the Department's Districts 1, 4, 5, and 7 and depicted in Exhibit "A"; and
2. a non-exclusive right to lease the limited access rights-of-way within the Demised Premises located in the Department's Districts 1, 4, 5, and 7 and depicted in Exhibit "A".

ROWSTAR acknowledges and agrees that its right to lease FDOT's limited access rights-of-way shall be non-exclusive only as to the limited access rights-of-way and such right shall coexist with the non-exclusive right to lease the limited access rights-of-way set forth in the Lodestar Agreement. ROWSTAR shall not have any right to lease Florida's Turnpike Enterprise rights-of-way.

The Demised Premises consists of parcels of land within the Department rights-of-way as described and depicted in Exhibit "A". The description of the Demised Premises provided in Exhibit "A" is intended to identify potential locations where ROWSTAR shall have the exclusive right to lease, sublease and to construct, operate, and maintain the Commercial Telecommunications System within the Department owned non-limited access rights-of-way in Districts 1, 4, 5, and 7, excluding Florida's Turnpike Enterprise rights-of-way and is also intended

to identify potential locations where ROWSTAR shall have a non-exclusive right to lease, sublease and to construct, operate, and maintain the Commercial Telecommunications System within the Department owned limited access rights-of-way in Districts 1, 4, 5, and 7, excluding Florida's Turnpike Enterprise rights-of-way. The Parties acknowledge that final design and construction of the Commercial Telecommunications System may require adjustment of the description of the Demised Premises and agree to amend the description to reflect the actual Demised Premises that are leased to ROWSTAR under this Agreement. Upon completion of construction of each specific Commercial Telecommunications System and upon provision of the survey required under Section 7.d.5. of this Agreement, ROWSTAR and the Department shall amend Exhibit "A" to accurately describe the Demised Premises. The right to adjust or amend the description of the Demised Premises is intended to provide a mechanism to allow for minor site specific revisions to the location of the Commercial Telecommunications System based on conditions on the ground as may be agreed to by the Department and ROWSTAR, but shall not be construed to conflict with the other terms of this Agreement.

b. **Present Condition.** ROWSTAR acknowledges that it is leasing the Demised Premises in "as-is" condition, without warranty of title. ROWSTAR has inspected the Demised Premises to the extent desired by ROWSTAR and is satisfied with the physical condition of the Demised Premises. Except as otherwise expressly set forth in this Agreement, the Department has not made and does not make any representations or express or implied warranties as to the physical condition or any matter or thing affecting or pertaining to the Demised Premises or its suitability for ROWSTAR's intended use, and ROWSTAR expressly acknowledges and agrees to take the Demised Premises "AS IS." ROWSTAR EXPRESSLY RELEASES THE DEPARTMENT FROM ANY LIABILITY, WARRANTY, OR OBLIGATION TO ROWSTAR RELATING TO THE CONDITION OF THE DEMISED PREMISES, SPECIFICALLY INCLUDING: LATENT AND PATENT CONDITIONS; ZONING; PERMITTING; SUBSOIL CONDITIONS; STORMWATER DRAINAGE CONDITIONS; THE EXISTENCE OR CONDITION OF ANY UTILITIES; HAZARDOUS WASTES, SUBSTANCES, AND MATERIALS, OR POLLUTANTS, AND ANY AND ALL OTHER MATTERS RELATING TO THE PHYSICAL CONDITION OF THE DEMISED PREMISES; THE PROVISIONS OF THIS SECTION 3.b. SHALL SURVIVE THE EXPIRATION OR EARLIER TERMINATION OF THIS AGREEMENT.

c. **Use of the Demised Premises.** ROWSTAR's use of the Demised Premises is limited to the leasing of the Demised Premises for the purpose of constructing, operating and maintaining ROWSTAR's Commercial Telecommunications System and subleasing/licensing the Demised Premises and the Commercial Telecommunications System to third party wireless carriers for the installation, operation and maintenance of wireless antenna, coax, and related equipment.

The right to construct, operate, and maintain the Commercial Telecommunications System shall not be construed as authorizing ROWSTAR to install, operate, or maintain utilities or other infrastructure that ROWSTAR may lease or resell for the provision of services to third parties who are not Federally licensed wireless providers or ROWSTAR's contractors/vendors engaged in the construction, operation, or maintenance of the Commercial Telecommunications System. All other rights in and to the Demised Premises are retained by the Department. ROWSTAR shall not use the Demised Premises in any manner that would unreasonably obstruct or interfere with any

transportation facilities existing as of the Effective Date unless the same is expressly permitted and described elsewhere in this Agreement, provided that the operation of the Commercial Telecommunications System in accordance with the Engineering Drawings shall not be deemed to be an unreasonable obstruction or interference. ROWSTAR will not use or occupy the Demised Premises for any unlawful purpose and will, at ROWSTAR's sole cost and expense, conform to and obey any applicable ordinances and/or rules, regulations, requirements, and orders of governmental authorities or agencies with jurisdiction over the use and occupation of the Demised Premises. ROWSTAR shall obtain, at ROWSTAR's sole cost and expense, any and all permits or licenses required by applicable law to operate and maintain any facility or equipment constructed by or installed through ROWSTAR on the Demised Premises as part of the Commercial Telecommunications System. The Department (at no cost to the Department) shall reasonably cooperate with ROWSTAR in connection with ROWSTAR obtaining all such permits and licenses. For any such permits and licenses to be issued by or through the Department, the Department shall work in good faith to expedite the issuance thereof at no charge to ROWSTAR.

The Department further hereby covenants that, subject to the terms of this Agreement, ROWSTAR and its sublessees/licensees shall have peaceful and quiet enjoyment of the Demised Premises for the installation, use and operation of the Commercial Telecommunications System during the full Term and any renewals thereof, without interruption or interference by the Department or any person claiming by, through, or under the Department. ROWSTAR acknowledges and agrees that ROWSTAR's exclusive right to possession of the Demised Premises during the Term of this Agreement will be subject to: (i) the Department's access rights expressly provided for in this Agreement; (ii) the rights of third parties under any permits, leases, easements, or other right to locate, operate, or maintain utilities within the Demised Premises as of the Effective Date and under any permits for utilities issued after the Effective Date, subject to the terms of Sections 3.e. and 7.g. hereof; (iii) any rights expressly reserved by the Department's grantors in documents recorded in the Public Records of each affected county in Florida, or expressly reflected or indicated on the Department's right-of-way maps, as of the Effective Date; and (iv) the right and authority of any police, fire and emergency services and any other security or emergency personnel, including the armed forces, and any governmental authority with jurisdiction over the Demised Premises to access the Demised Premises as necessary for fire and rescue services, emergency management and homeland security purposes, including the prevention of, or response to, a public safety emergency. ROWSTAR shall cooperate with police, fire and emergency services and any other security or emergency personnel, including the armed forces, with respect to their exercise of emergency management and homeland security powers. Any entry by the Department or the State onto the Demised Premises required or permitted under this Agreement shall not constitute a reentry, trespass, or a breach of the covenant for quiet enjoyment contained in this Agreement.

The Department acknowledges and agrees that ROWSTAR's exclusive right to lease the non-limited access rights-of-way within the Demised Premises for the purpose of constructing, operating, and/or maintaining the Commercial Telecommunications System is a right that shall be superior to and to the exclusion of any right by any third party to construct, operate and maintain Commercial Telecommunications System in the Demised Premises, which right exists only for the Demised Premises located in the Department's Districts 1, 4, 5, and 7, excluding Florida's Turnpike Enterprise right-of-way and the limited access rights-of-way. With respect to the limited access rights-of-way, ROWSTAR shall have a non-exclusive right to lease such limited access

rights-of-way and such non-exclusive right to lease shall coexist with the non-exclusive right to lease the limited rights-of-way as set forth in the Lodestar Agreement. The Parties acknowledge and agree that ROWSTAR's exclusive right to lease the non-limited access rights-of-way portions of the Demised Premises will ensure a more organized method of developing the Commercial Telecommunications System, which will enhance the benefits to be derived by the Department from this Agreement.

Any construction of the Commercial Telecommunications System shall be performed and arranged in a manner which will not unreasonably interfere with the Department's use of the Demised Premises with respect to the convenient, safe, and continuous use, or the maintenance and improvement, of the public right-of-way located on or adjacent to the Demised Premises and in accordance with the terms of any special permits issued for construction and maintenance of the Commercial Telecommunications System or other safety related matters.

d. **Identification of Sites.** ROWSTAR shall identify potential sites for construction or installation of the Commercial Telecommunications System and submit a Preliminary Request to Lease ("Preliminary Request") by email to the Contract Manager. The identification of potential sites may include identifying any existing structure that may need to be replaced by ROWSTAR to accommodate the structural and/or height requirements of the Commercial Telecommunications System. The Department and ROWSTAR shall meet within ten business days at each site requested by ROWSTAR in the Preliminary Request to identify the site with latitude and longitude coordinates (and if applicable any existing structures that may require replacement) and to identify any potential issues that may interfere with or affect the site location. The Preliminary Request shall identify all potential sites being requested for certain areas within the Demised Premises and include requested dates and times for the site visits. After the site visits are complete, ROWSTAR shall submit a summary of field review with the agreed upon latitude and longitude coordinates for each site as identified in the field, type of structures needed or to be replaced, power/utility requirements, an estimated time period for due diligence and special requirements for each site. The Department will review the summary and either issue its Preliminary Site Approval ("Preliminary Site Approval") or provide ROWSTAR with comments and requested changes within five business days of its receipt of the summary of field review. If the Department requests changes to the Preliminary Request, ROWSTAR shall make the applicable changes and resubmit the Preliminary Request, as amended. The Department shall then process the Preliminary Request, as amended, and issue a Preliminary Site Approval within five business days of its receipt of the amended Preliminary Site Approval.

Once ROWSTAR has obtained a Preliminary Site Approval, it must complete its due diligence efforts and then submit its Final Request to Lease ("Final Request") by email to the Contract Manager, which Final Request must comply with the following: i) all criteria set forth in this Agreement, ii) the Department's Utility Accommodation Manual and any subsequent amendments thereto (collectively, the "UAM"); (provided, however, the Parties agree that the review and approval schedules set forth in this Agreement shall control) and iii) all federal, state, and local regulations. Additionally, the site may not be located in a median, shall be located as close to the outer edge of the Department's right-of-way boundary as practical and in accordance with the offsets identified in Table 4.2.3 of the UAM, and will not be placed in locations that require new barriers to maintain a safe Clear Zone. The Final Request shall include the following:

1. Latitude and longitude coordinates identifying the site location(s);
2. A key map showing the proposed location and the approximate distance and direction from the proposed work area to the nearest town, major road intersection, bridges, or railroad crossings;
3. Plan view drawings (preferably to scale) that are signed and sealed by a Professional Engineer licensed in Florida, showing all of the following:
 - a) The right-of-way lines, limited access lines, or easement lines;
 - b) The proposed commercial telecommunications structure and appurtenances, and horizontal and vertical locations of each, along with minimum vertical clearance above the top of the pavement or existing unpaved ground;
 - c) Cross-sections to adequately reflect the proposed installation's location
 - d) Signed and sealed plans and specifications for proposed attachments to structures suitable for inclusion in the Florida Bridge Management Inventory System file including a bridge load rating analysis where attachments affect the bridge's carrying capacity;
 - e) Justification and drawings showing proper replacement of the roadway for any open trenching, pavement cuts, or water supply line conflicts;
 - f) The horizontal distance from the proposed structure and appurtenances to a well defined feature of the transportation facility (such as the edge of a travel lane);
 - g) A tie to roadway/railroad mileposts, or stationing (where available);
 - h) The limits of the work area (including staging, access points, or other areas to be used);
 - i) The proposed method of installation, materials, function, type, and size of proposed installation;
 - j) Horizontal and vertical aboveground features such as existing utility poles within the work area;
 - k) Horizontal and vertical underground facilities such as utilities, drainage pipes, or intelligent transportation system lines within the proposed work area as can reasonably be obtained by a review of existing records and a topographical survey of above ground features;
 - l) Significant physical features such as vegetation, wetlands, or bodies of water;
4. Signed and sealed plans and specifications for proposed attachments to structures, and equipment installation details (and if applicable signed and sealed plans and specifications for the replacement structure). The designs shall comply with current revisions of TIA222 "Structural Standard for

Antenna Supporting Structures and Antennas” and the Florida Building Code local wind loading requirements;

5. Federal Communications Commission licenses and approval, if applicable;
6. Federal Aviation Administration hazard to aviation study and approval, if applicable;
7. Maintenance of Traffic plans, signed and sealed by a Professional Engineer licensed in Florida;
8. Radio Interference analysis, as provided by ROWSTAR’s sublessees/licensees.

e. **Approval of Sites.** The Department shall process all Final Requests in accordance with Section 120.60, Florida Statutes and the requirements of the UAM (subject to the schedules set-forth in paragraph (d) and (e) of this Agreement). Upon receipt of a complete Final Request that contains all required items as set forth above, the Department will within five (5) business days of such receipt, either issue its final approval of the site (“Final Approval”) or provide ROWSTAR with comments and requested changes. If the Department has comments and requests changes to a Final Request, upon resubmittal of the Final Request by ROWSTAR, the resubmittal process shall occur within the time frames set-forth herein. The Final Approval issued by the Department may contain work restrictions or special requirements that must be complied with and addressed by ROWSTAR prior to installation or construction of the Commercial Telecommunications System. The Department shall review the Final Request and proposed work for all of the following:

1. Completeness
2. Compliance with the UAM;
3. Impacts to all of the following:
 - a) Public safety;
 - b) Revenue generation;
 - c) The Department’s Five Year Work Program;
 - d) Safety improvement projects;
 - e) Department maintenance activities;
 - f) Scenic enhancement projects;
 - g) Landscape projects;

- h) Local events and activities;
- i) Easements;
- j) Placement of future utilities.

With respect to the design of the Commercial Telecommunications System, prior to the completion of the Plans (as defined in this Agreement), the Department reserves the right to request adjustments to structures or improvements as the Department reasonably deems necessary for the protection of public health, safety, or welfare, or as may be required by a State or Federal agency with jurisdiction over the Property or the Project, or include additional instructions to address site specific or transaction specific conditions not addressed in the UAM, by written notice to ROWSTAR setting forth in reasonable detail the adjustments being requested. The Parties shall meet within ten (10) business days after ROWSTAR's receipt of the notice in order to discuss the requested adjustments and determine a mutually satisfactory resolution, failing which the Parties shall proceed pursuant to the dispute resolution procedure set forth in Section 7. Additionally, the Department reserves the right to maintain, expand, or otherwise modify any transportation facility and require ROWSTAR to relocate its structures or equipment accordingly.

The Parties acknowledge and agree that the Final Approval shall be deemed to be a site specific lease, which acknowledges that ROWSTAR is leasing that specific portion of the Demised Premises ("Site"), and that pursuant to the Final Approval, ROWSTAR may sublease the Site to third party wireless carriers for the uses set forth in paragraph 3.c., above.

f. Physical Access for Operation and Maintenance and Emergencies from other Department Property. The Department will review and approve ROWSTAR's requests for access to Department right-of-way as part of its approval of the Engineering Drawings for the Commercial Telecommunications System. Only authorized employees, subcontractors, and agents of ROWSTAR and of its subleases/licenses shall have access to the Commercial Telecommunications System sites.

g. Utilities. ROWSTAR and its sublessees/licensees shall be solely responsible for the acquisition and payment of utility services required for construction, operation, and maintenance of the Commercial Telecommunications System, including, but not limited to, power and communications services. Any utilities providing services to ROWSTAR or its sublessees/licensees shall apply to the Department for a utility permit under Rule Chapter 14-46, F.A.C. to install facilities on the Department's right-of-way. For purposes hereof, "utility(ies)" shall mean infrastructure such as pipes, wires, pole lines, and appurtenances used to transport or transmit, electricity, steam, gas, water, waste, voice or data communication, cellular service, radio signals, or storm water not discharged onto the Department's right-of-way or any other installation for which a permit is issued by the Department in accordance with Department rules adopted under Section 337.401, Florida Statutes. Additionally, ROWSTAR agrees that in the event a utility relocation is necessary on the Department's limited access right-of-way where the Commercial Telecommunications System is located, and such relocation is reimbursable under Section 337.403, Florida Statutes, ROWSTAR is not entitled to submit a claim for reimbursement to the Department for such relocation costs.

h. **Utility Permits.** For purposes of this paragraph, the Parties agree that ROWSTAR shall not be required to apply for and/or to obtain a Utility Permit for the construction, operation and maintenance of the Commercial Telecommunications System. A Utility Permit shall be required only for those utilities, if any, that must be installed to serve each Commercial Telecommunications System.

ROWSTAR acknowledges that the Department may have issued permits or other authorization for the installation and maintenance of utilities within the Demised Premises and, under current law, is required to continue to issue permits for the installation and maintenance of utilities within the Demised Premises in accordance with the Department's rules. The Department, and the owners of any utilities existing as of the Effective Date, may install, permit, design, manage, maintain, inspect, repair and rehabilitate any of their existing utilities (whether provided by the Department, the State or third parties) in, on, under, across, over or through the Demised Premises (including water and sewer lines, power transmission lines, fiber optic cable, surveillance equipment and other communications), upon reasonable notice in compliance with the Department's rules. ROWSTAR or its sublessees/licensees shall have the right, but not the obligation, at all times during the Term of this Agreement, to install, design, manage, maintain, repair, and rehabilitate utilities or other services for its own account or its sublessees/licensees (and not for ROWSTAR to lease or resell for the provision of services to third parties who are not Commercial Telecommunications System passengers or ROWSTAR's contractors/vendors engaged in the construction, operation, or maintenance of the Commercial Telecommunications System) to the extent that the said utilities or services are necessary or desirable for the Commercial Telecommunications System. The rights of ROWSTAR under this Agreement are at all times expressly subject to the rights and requirements specified in the "Agreement and Global Settlement" between the Department and Florida Gas Transmission Company, LLC dated August 21, 2013.

i. **Liens.** Pursuant to applicable law, including, but not limited to, section 11.066(5), Florida Statutes, the Department's interest in the Property is not subject to a lien of any kind. ROWSTAR shall not allow any mortgages, liens, or other encumbrances to attach to the Demised Premises as a result of the financing or construction of the Commercial Telecommunications System, or use of the Demised Premises by ROWSTAR and ROWSTAR indemnifies and agrees to hold the Department harmless of and from any such encumbrances.

j. **Recording.** This Agreement (or a memorandum hereof) and the legal descriptions of the Demised Premises may be recorded by ROWSTAR at its sole option and expense.

k. **Reservation of Rights.** The Department reserves for itself, the State, and all grantees, licensees, permittees, and others claiming by, through, or under the Department or the State, the right at all times during the Term of this Agreement to enter the Demised Premises at all reasonable times and upon reasonable prior notice. The reservation of a right by the Department to enter upon the Demised Premises and perform any act shall not be deemed to: impose any obligation on the Department to do so; make the Department responsible to ROWSTAR or any

third party for the failure to do so; or relieve ROWSTAR from any of its obligations under this Agreement.

4. OWNERSHIP

a. **Department Property.** During the term of the Agreement, the fee ownership of the Demised Premises, consisting of Department real property, and all improvements, fixtures and appurtenances placed thereon by the Department, including all Department transportation facilities and other Department structures existing as of the Effective Date, shall be and remain at all times in the name of the Department.

b. **ROWSTAR Property.** During the Term of this Agreement, ROWSTAR shall own all facilities, equipment and improvements constructed on the Demised Premises as part of the Commercial Telecommunications System (exclusive of any wireless antenna, coax, and related equipment installed, operated and maintained by ROWSTAR's sublessees/licensees, which shall be owned by the sublessees/licensees wireless providers installing such antenna, coax, and related equipment as part of the Commercial Telecommunication System). ROWSTAR agrees that the Commercial Telecommunications System constructed or installed on the Demised Premises shall be at its risk only and that the Department shall not be liable for loss or damage to the Commercial Telecommunications System caused by the act of any person, except to the extent caused by an Event of Default by the Department (as hereinafter defined) or by a tortious act or omission of the Department, its agents, or its employees, but with respect to tort claims for loss or damage, only to the extent the Legislature has by law waived the Department's sovereign immunity in tort under the Constitution and laws of the State of Florida.

c. **Existing and Replacement Property.** During the term of this Agreement, the Parties acknowledge and agree that existing Department structures may be used and incorporated by ROWSTAR into the Commercial Telecommunications System, provided such structures are approved by the Department for ROWSTAR's use through the Identification of Sites process as outlined in Section 3.d. of this Agreement. ROWSTAR acknowledges and agrees that the inclusion of any existing structure into the Commercial Telecommunications System shall be subject to and occur in a manner that will not interfere with the Department's use of such structures. If ROWSTAR or the Department determines that a structure must be replaced to meet the structural and or height requirements of the Commercial Telecommunications System, ROWSTAR shall have the right to replace such structure ("Replacement Structure"). The Replacement Structure will be designed to accommodate the Department's use of such structure as well as ROWSTAR and its sublessee's/licensee's uses of such structure.

The Department shall retain ownership of any existing structure used and incorporated in the Commercial Telecommunications System subject to ROWSTAR and its sublessee's/licensee's rights to use and occupy such structure as part of the Commercial Telecommunications System. ROWSTAR shall retain ownership of any Replacement Structure subject to the Department's use and occupancy of such structure during the term of this Agreement. Upon termination or expiration of this Agreement, the ownership and removal of a Replacement Structure shall be governed by paragraphs 4.d. and 4.e. below, whichever is applicable

d. **Removal of ROWSTAR Property Upon Expiration.** Subject to the rights of any Leasehold Mortgagee under this Agreement, upon the termination or expiration of the Term of this Agreement, at no cost to the Department, and unless the Department notifies ROWSTAR in writing at least thirty (30) days prior to the date of expiration not to remove the facilities owned by ROWSTAR, ROWSTAR shall remove its Commercial Telecommunications System and all related structures and equipment and shall restore the Demised Premises where such improvements have been removed to the condition that existed as of the Effective Date within 90 days after the termination or expiration of this Agreement, and restoration of the Demised Premises shall not be accomplished in a manner that adversely impacts any utilities installed under a Department issued permit after the Effective Date. The Department shall provide ROWSTAR with reasonable access to the Property for ROWSTAR to complete actions permitted and/or required by this paragraph. The terms and provisions of this paragraph shall survive the expiration or earlier termination of this Agreement until completion of such removal and restoration.

e. **Conveyance of ROWSTAR Property to the Department.** Subject to the rights of any Leasehold Mortgagee under this Agreement, if ROWSTAR is not required to remove the Commercial Telecommunications System upon the termination or expiration of the Term, the Commercial Telecommunications System (exclusive of any wireless antenna, coax and related equipment installed, operated and maintained by ROWSTAR's sublessees/licensees) shall be conveyed by ROWSTAR to the Department, at no cost to the Department, and free and clear of any liens, contract rights, or encumbrances of any kind and nature.

5. TERM

The term of this Agreement shall be for ten (10) years, beginning on the date of full execution of this Agreement (the "Effective Date," and the ten year period from the Effective Date shall be the "Initial Term"), unless sooner terminated in accordance with the terms of this Agreement. Provided this Agreement is in full force and effect and provided that at the time of exercise ROWSTAR is using the Demised Premises for the Commercial Telecommunications System and that ROWSTAR is not in default under this Agreement (subject to Force Majeure Events), ROWSTAR shall have the right to renew this Agreement for four (4) additional terms of ten (10) years each (each a "Renewal Term"), under the same terms and conditions, by delivering a written notice of its intention to renew this Agreement to the Department no later than one hundred eighty (180) days before the end of the current term. The "Initial Term" and each "Renewal Term" (if any) are collectively referred to as the "Term" throughout this Agreement.

6. RENT

a. ROWSTAR shall compensate the Department for use of the Demised Premises by payment of 51% of the annual gross revenues generated by each sublease/sublicense executed by ROWSTAR for space within the Demised Premises. The term "gross revenues" is defined as that term is defined under the Generally Accepted Accounting Principles ("GAAP"). The gross revenues shall include gross billable earned revenue on an accrual basis for revenues earned under this Agreement with the effective date being the date on which accrual of revenues begins. Gross revenues also includes services utilized for ROWSTAR's internal use and will have an implied value at the current market rate which will be no less than that rate charged to any sublessee/licensee.

b. ROWSTAR shall make annual rent payments to the Department in advance on or before each sublease/sublicense start and annual anniversary date while this Agreement is in place. ROWSTAR shall notify the Department each time a new sublease/sublicense agreement is executed or amended and shall maintain and provide to the Department on a quarterly basis a cumulative schedule listing all agreements, start and anniversary dates and associated gross revenues thereof.

c. ROWSTAR shall make a one-time, non-refundable payment of \$100,000 to the Department within 45 days of execution of this Agreement.

d. If gross revenues meet or exceed the projections for each fiscal year as set forth in Exhibit "E", ROWSTAR shall pay the Department bonus payments as follows:

1. \$500,000 on or before July 1, 2019.
2. \$600,000 on or before July 1, 2020.
3. \$700,000 on or before July 1, 2021.
4. \$800,000 on or before July 1, 2022.
5. \$900,000 on or before July 1, 2023.
6. \$1,000,000 on or before July 1, 2024.

These bonus payments are in addition to the annual gross revenues paid to the Department, and shall not be used to offset any payments due from ROWSTAR to the Department.

f. ROWSTAR shall, at a minimum, provide to the Department within ninety (90) days of the end of each fiscal year (July 1-June 30) throughout the term of this Agreement, a statement of the gross revenues, expenditures, and net profit related to the subleases/sublicenses issued by ROWSTAR under this Agreement for the immediately preceding fiscal year, which shall include a reconciliation of verified gross revenue amounts paid to the Department. ROWSTAR shall cause the statements to be verified by an independent certified public accountant that is reasonably acceptable to the Department, at no cost to the Department. The independent certified public accountant shall issue an opinion as to the accuracy of the amounts reported. This

requirement to provide an annual, verified statement of gross revenues paid shall be in addition to any other obligations set forth in this Agreement and shall in no way limit or excuse ROWSTAR from such obligations.

Records of gross revenues and costs incurred under this Agreement shall be maintained and made available upon request to the Department at all times during the term of this Agreement and for five (5) years after the Department's receipt of final gross revenues pursuant to this Agreement. Records of gross revenues and costs incurred shall include ROWSTAR's general accounting records and the project records, together with supporting documents and records of ROWSTAR and all subleases/sublicenses, and all other records of ROWSTAR and subleases/sublicenses considered necessary by the Department for a proper audit of project costs. The Department shall be entitled at all times to be advised, at its request, as to the status of work being done by ROWSTAR and of the details thereof. Either party to this Agreement may request and be granted a conference.

7. CONSTRUCTION OF THE COMMERCIAL TELECOMMUNICATIONS SYSTEM

a. **Project Manager.** ROWSTAR shall have appointed at all times a Project Manager, who shall have complete supervisory responsibility for all ROWSTAR construction and installation activities within the Demised Premises, and shall have full authority to act on behalf of ROWSTAR and bind ROWSTAR. The Project Manager shall be ROWSTAR's representative assigned to work with the Department throughout the term of this Agreement, and ROWSTAR may replace and reappoint its Project Manager from time to time.

b. **No Cost to the Department.** ROWSTAR shall be responsible for designing, financing, procuring all components of, constructing, installing, operating and maintaining its Commercial Telecommunications System at no cost to the Department.

c. **Permits.** All permits and licenses for construction of the Project shall be obtained by ROWSTAR (or its sublessees/licensees, agents or contractors) at ROWSTAR's sole cost and expense from all local, state, and federal entities having jurisdiction, including, but not limited to, the following, if and as applicable: Federal Communications Commission, Federal Aviation Administration, Federal Highway Administration, United States Army Corps of Engineers, and the Florida Department of Environmental Protection. The Department (at no cost to the Department) shall reasonably cooperate with ROWSTAR in connection with ROWSTAR obtaining all such permits and licenses. Further, for any such construction permits and licenses to be issued by or through the Department, the Department shall work in good faith to expedite the issuance thereof at no charge to ROWSTAR. ROWSTAR shall require all contractors and subcontractors to have all required licenses and certifications. All work performed on the Demised Premises shall conform to all applicable federal, state, and local regulations. ROWSTAR shall abide by all applicable local development and building codes and regulations and shall provide the necessary studies or data required thereby and shall comply with any applicable provisions of the National Environmental Policy Act. If requested by the Department, ROWSTAR shall provide copies of all permits and reasonable evidence of compliance with applicable local development and building codes and regulations at the time it provides the Department with Project plans for review. ROWSTAR shall require all contractors and subcontractors performing Work under this

Agreement to have all required licenses and certifications.

d. **Design Requirements for Work Within the Demised Premises.**

1. ROWSTAR shall employ Qualified Professional(s) to design, engineer, and oversee the construction and installation of the Commercial Telecommunications System.
2. All Engineering Drawings, final plans, as-built drawings, documents, reports, studies, surveys, and other data prepared by the Qualified Professional(s) shall be signed and sealed by such professional.
3. Upon completion of construction of each Commercial Telecommunications System, ROWSTAR shall file with the Department a duplicate set of the original drawings, tracings, plans, maps, and as-built boundary surveys, including legal descriptions of the Demised Premises, along with an as-built set of full-size prints for all structural elements of each applicable Commercial Telecommunications System. The survey work shall meet or exceed the minimum technical standards for land surveyors set forth in Florida Administrative Code, Section 61G17-6, pursuant to subsection 472.027, Florida Statutes, and shall include state plane coordinates to submeter accuracy on at least two corners of the Demised Premises and GIS requirements. In addition, the as-built plans shall include the identification of all equipment, and interconnection of major equipment components, that were installed upon the Demised Premises by or through ROWSTAR. ROWSTAR's Engineer of Record ("EOR") shall signify, by affixing an endorsement (seal/signature, as appropriate) on every sheet of the as-built set, that the work shown on the endorsed sheets was produced by or under the direction of the EOR. With the tracings and the as-built set of prints, the EOR shall submit a final set of design computations. The computations shall be bound in an 8.5" x 11" format and shall be endorsed (seal/signature, as appropriate) by the EOR. The EOR shall also submit the as-built drawings to the Department in Auto CADD files, using a format and layering system reasonably acceptable to the Department.

e. **Construction/Installation Activities and Requirements.**

1. The construction of the Commercial Telecommunications System shall be completed in accordance with the Plans, all permits, and the Request to Lease, subject to any field adjustments or amendments. Further, the construction of the Project as a whole shall proceed under the following terms and conditions:
 - a) Should the construction of a Commercial Telecommunications System not commence within one (1) year from the Effective Date of this Agreement (subject to extension for Force Majeure events), the Department may unilaterally terminate this Agreement as provided below. Additionally, should

ROWSTAR, after commencement of operations on the Commercial Telecommunications System, abandon the Commercial Telecommunications System for a period longer six (6) months (subject to extension for Force Majeure events), the Department may unilaterally terminate this Agreement as provided below.

- b) The Department shall have the authority to temporarily suspend construction work by ROWSTAR, wholly or in part, for such period or periods as may be necessary as a result of extreme adverse weather conditions such as flooding, catastrophic occurrences that constitute an unreasonable imposition on the public health, safety or welfare, or upon the issuance of a Governor's Declaration of a State of Emergency. Such suspensions will be in writing and give detailed reasons for the suspension and shall be for the shortest possible time period. Whenever the Department suspends work, ROWSTAR shall be granted additional days equal to the number of days of suspension. During any period of suspension, ROWSTAR shall remove construction equipment and materials from the Clear Zone, except those required for the safety of the traveling public.
- c) ROWSTAR and ROWSTAR's contractor shall perform the construction of the improvements for the Project using such means and methodology as will not, except as specifically authorized by the Department in writing, interfere with the safe and efficient operation of all State roads and other transportation facilities located on or abutting the Demised Premises.
- d) Prior to commencing construction of the Project, ROWSTAR shall provide to the Department a certification from ROWSTAR's contractor, in a form reasonably acceptable to the Department, verifying that the contractor will not, in any manner in violation of applicable laws and ordinances, use asbestos-containing building materials in the construction of the Project or lead-containing products in pipes or materials in construction of the Project.
- e) The Department shall have the right to make such inspections of the Commercial Telecommunications System as it reasonably deems necessary to make sure that all construction is proceeding in accordance with all other terms and conditions of this Agreement, provided that (i) any such inspections shall be conducted in a manner so as to not unreasonably interfere with ROWSTAR's construction work and (ii) where reasonable under the circumstances, the Department shall provide ROWSTAR

with written notice prior to any such requested inspection. In the event that the Department's inspector determines that the construction is not proceeding as required by the Plans or that the public health, safety, or welfare is being compromised by the construction in a manner in violation of applicable law, the Department shall notify ROWSTAR in writing, setting forth in reasonable detail the issue(s) identified by the inspector. The Parties shall meet within seven (7) business days after ROWSTAR's receipt of the notice in order to discuss the issue(s) and determine a mutually satisfactory resolution, failing which the Parties shall proceed pursuant to the dispute resolution procedure set forth above in this Section 7.

- f) ROWSTAR shall provide the Contract Manager no less than thirty (30) days advance written notice before commencing construction and installation of the Project. Within such thirty (30) day period, the Department shall remove any equipment (including but not limited to road construction and maintenance equipment) located on the Demised Premises.
- g) Significant revisions in the design or construction of the Project that deviate from the Plans or the permits must receive prior written approval from the Contract Manager.
- h) All construction of the Project shall be performed in a good and workmanlike manner at no cost or expense to the Department.
- i) The Department shall not be required to perform any construction work to prepare the Demised Premises for construction, operation, or maintenance of the Project, but the Department shall ensure that access is granted to ROWSTAR as needed for the construction, operation, or maintenance of the Project pursuant to the Plans and the Permit.
- j) Except in the case of an emergency (and then only to the extent necessary to avoid injury or death to individuals or damage to property) and except for limited access necessary for ROWSTAR's performance of its obligations hereunder or its compliance with applicable laws that does not interfere with the Department's use or operation of such other properties in any material respect, ROWSTAR shall not enter upon any property of the Department or the State adjacent to, above or under the Demised Premises, in connection with the Project without the prior approval of the Department or the State, other than property that is open to the public. Except as otherwise authorized by the Department in writing, neither ROWSTAR

nor ROWSTAR's contractor is authorized to engage in any construction activities, temporary or permanent, on the Department's property other than the Demised Premises. The Department shall grant ROWSTAR temporary access to the Department's property that is not part of the Demised Premises when necessary for construction of the Project. Such access shall be conditioned upon ROWSTAR's obligation to protect and restore any such other Department property and facilities located thereon, ROWSTAR's compliance with the Plans and permits, and such reasonable restrictions as the Department may impose to protect the safety of the traveling public.

- k) ROWSTAR shall be liable for all damage to property, real or personal, of third parties to the extent caused by ROWSTAR or ROWSTAR's contractor in the completion of the Project, except to the extent caused by the Department, its agents, or employees.
- l) ROWSTAR's storage of materials on the Demised Premises shall be confined to areas authorized by the Department in writing or as shown in the Plans. Where materials are transported to a job site, vehicles shall not be loaded beyond the loading capacity prescribed by any applicable federal, state, or local law or regulation. When it is necessary to cross curbing or sidewalks, protection against damage shall be provided by ROWSTAR, at no cost to the Department. ROWSTAR shall repair any damage to roads, curbing and sidewalks caused by ROWSTAR or ROWSTAR's contractor, at no cost to the Department. ROWSTAR shall not store any materials on the Demised Premises other than those materials required to construct and/or operate the Project. ROWSTAR shall be responsible for any such materials stored at a job site related exclusively to the Project and the Department shall not be obligated to replace any such Project-related materials lost, damaged, or destroyed at its expense, except to the extent caused by the Department, its agents, or employees and permitted by law. ROWSTAR shall be responsible for clearing from each job site all unreasonable waste materials and rubbish generated by ROWSTAR in constructing the Project. Each job site shall at all times be kept free from an unreasonable accumulation of waste material or rubbish.
- m) ROWSTAR shall arrange its work for the Project and dispose of its materials so as not to unreasonably interfere with the operations of other contractors engaged in work adjacent to the Demised Premises being performed by the Department or its contractors and to cooperate with the Department and such other

contractors in a reasonable manner.

- n) ROWSTAR shall protect all existing structures on the Department's right-of-way during construction. ROWSTAR shall maintain its work in such condition that adequate drainage will exist at all times. The construction of the Project shall not temporarily or permanently cause a material adverse effect to existing functioning storm sewers, gutters, ditches, and other run-off facilities. Any fire hydrants on or adjacent to the Department's right-of-way shall be kept accessible at all times and no material or obstruction shall be placed within fifteen (15) feet of any such fire hydrant. Heavy equipment shall not be operated close enough to pipe headwalls or other structures to cause damage or displacement.
 - o) Notwithstanding any provision in this Agreement, the Road and Bridge Standards, or the Design-Build Guidelines to the contrary, without the consent of the owner of any existing utilities installed in, on, or under the Demised Premises as of the Effective Date of this Agreement pursuant to permits or other authorization issued by the Department, construction of the Project shall not interfere with such utilities and no approval of the Plans by the Department or failure of the Department to review the Plans shall relieve ROWSTAR of such responsibility.
 - p) ROWSTAR shall post electromagnetic energy warning signs on or about the Demised Premises, as required by law. Additionally, ROWSTAR shall post emergency contact information on or about the Demised Premises that includes a designated person's name or position and working phone number.
2. ROWSTAR agrees that it will not install, nor allow to be installed by a sublessee/licensee on the Demised Premises, any electronic equipment that will interfere with any existing State of Florida communications, or with transmission on any frequencies allocated by the Federal Communications Commission ("FCC") for non-commercial, state governmental communications. Before submitting any Request to Lease, ROWSTAR will contact the Department to determine all frequencies being used by the Department or its lessees/sublessees/licensees, or other state agencies. In the event ROWSTAR or its sublessees/licensees causes any radio frequency interference to the State's communications, ROWSTAR shall immediately remedy the situation or abandon the activity causing the interference except for short tests to confirm the elimination of the interference, which tests shall be performed only after prior written notice to the Department and only during the time period between 2:00 am and 6:00 am Except for the

installation of any type of transmission facilities on existing sites leased by the Department to third parties or other state agencies, and except for transmission on any frequencies allocated by the FCC for non-commercial, state governmental communications, the Department agrees to use its best efforts not to install or allow to be installed in the future any electronic equipment that will interfere with ROWSTAR'S or its sublessees/licensees communications equipment installed on the Demised Premises.

3. ROWSTAR and the Department agree that if a dispute should arise under this Agreement with respect to the Plans, permits, or any other issue relating to ROWSTAR's design, permitting or construction of the Commercial Telecommunications System, the ROWSTAR Project Manager and the day-to-day lead person for the Department shall, at the written request of either party, endeavor to resolve the issue or dispute by good faith negotiations. If the Parties are unable to resolve their dispute within ten (10) days (the "Dispute Negotiation Period"), then ROWSTAR and the Department shall, at the written request of either party, require that the matter be reviewed by a senior level executive of each party (in the case of ROWSTAR, by a Senior Vice President or higher, and in case of the Department, by the Chief Engineer or higher). If these senior officers are unable to resolve the matter within ten (10) business days after the Dispute Negotiation Period (the "Senior Level Review Period"), then ROWSTAR and the Department shall, at the written request of either party, attempt to mediate their dispute for a period of thirty (30) days following the end of the Senior Level Review Period (the "Mediation Period"), using a third party mediator who is neutral and independent of the Parties to this Agreement (the "Mediator"), such Mediator to be jointly selected by ROWSTAR and the Department within seven (7) business days after the end of the Senior Level Review Period. If the Parties cannot agree on the Mediator within such time period, then within five (5) days thereafter, each party shall select an independent mediator, and those two mediators shall (within five (5) days) select the Mediator. Such mediation shall be conducted in Leon County, Florida. No information exchanged in such mediation shall be discoverable or admissible in any litigation involving the Parties. Neither Party is bound by the result of the mediation process set forth in this paragraph, but such mediation process shall be a condition to either of the Parties filing a lawsuit or an administrative proceeding relating to a dispute with respect to the Plans, the Permit or any other issue relating to ROWSTAR's design, permitting or construction of the Project.

f. **Inspection Requirements.** All steel poles installed or constructed as part of the Commercial Telecommunications System must be inspected and reported following the guidelines of the Department's Structures & Facilities Ancillary Structures Inspection Field Guide every 60 months. Concrete poles do not require inspection; however, the Department reserves the right to require inspections of concrete poles, in its sole discretion. Inspection reports shall be submitted to the Contract Manager.

g. **Environmental Pollution.** Execution of this Agreement constitutes a certification by ROWSTAR that the Project will be carried out in conformance with all applicable environmental laws and regulations. ROWSTAR will be responsible for any liability in the event of ROWSTAR's non-compliance with applicable environmental laws or regulations, including the securing of any applicable permits, and for any liability that results from ROWSTAR's (or its contractor's) failure to exercise due care and take reasonable precautions with respect to any hazardous material or substance or pollution existing on the Demised Premises, taking into consideration the characteristics of such hazardous material or substance or pollution, in light of all relevant facts and circumstances, and will reimburse the Department for any loss incurred in connection therewith. If in the course of, and as a result of, construction of the Project, remediation of any hazardous material or substance or pollution existing on the Demised Premises as of the Effective Date is required by law, ROWSTAR shall timely perform, or cause to be performed, such remediation work as is required under applicable law. ROWSTAR and the Department shall share equally in the cost of such remediation; provided, however, that if the Department has actual knowledge that any such hazardous material or substance or pollution exists on the Demised Premises as of the Effective Date, and the existence thereof was not made known to ROWSTAR, in writing, prior to the Effective Date, then the Department shall be responsible to pay the entire cost of the remediation work. The provisions of this Section 6.f. shall survive the expiration or earlier termination of this Agreement. As an alternative to remediation, ROWSTAR may elect not to construct the particular Commercial Telecommunications System within the contaminated portion of the Demised Premises.

h. **Utilities.** ROWSTAR acknowledges that pursuant to Florida law, ROWSTAR's use of the Demised Premises may not interfere with present or future utility needs for the Demised Premises.

1. Accordingly, in accordance with applicable law, ROWSTAR shall be responsible, at no cost or expense to the Department, for locating and identifying potential conflicts with any utilities currently located on the Demised Premises as of the Effective Date ("Current Utilities"). In the event that any conflicts with Current Utilities are identified, ROWSTAR shall make such adjustments in ROWSTAR's use of the Demised Premises, at no cost or expense to the Department, so as to avoid the conflict and not disturb the utility without the utility's consent, with it being understood and agreed that nothing herein shall prevent ROWSTAR from negotiating, and completing, the relocation of any such Current Utilities with the owners thereof at no cost or expense to the Department.
2. For utilities to be installed on the Demised Premises pursuant to a Department permit issued after the Effective Date ("Future Utilities"), the Department shall deliver advance written notice to ROWSTAR describing, with specificity, the use and location thereof. When the Department receives a completed application for a permit to install Future Utilities, the Department's Contract Manager will provide a copy of the completed application to ROWSTAR in the manner provided for notice under this Agreement. ROWSTAR shall advise the Department's Contract Manager

in writing of any potential conflicts between the identified Future Utility and the Project that would adversely affect ROWSTAR's use and operation of the Commercial Telecommunications System in any material respect and any specific written objections to the issuance of the permit within ten (10) days of its receipt of the completed application from the Department's Contract Manager, for the Department to document appropriate conditions when issuing the permit. ROWSTAR shall at the same time provide a copy of its response to the Future Utility permit applicant. Access by or through the Department to the Demised Premises for any such Future Utilities shall be subject to the terms of Section 3.g. and Future Utilities shall be installed, permitted, designed, managed, maintained, inspected, repaired and rehabilitated (whether by the Department, the State or third parties) in compliance with the Department's rules and in accordance with conditions imposed by the Department in accordance with this Agreement to avoid an adverse material effect on ROWSTAR's use and operation of the Commercial Telecommunications System identified by ROWSTAR to the Department as provided above in this subsection 2. Notwithstanding any provision of this Agreement to the contrary, all rights of ROWSTAR pursuant to this Agreement are expressly subject to the rights of Florida Gas Transmission Company and its successors and assigns pursuant to that certain "Agreement and Global Settlement" between the Department and Florida Gas Transmission Company, LLC., dated August 21, 2013 ("Agreement and Global Settlement"), which ROWSTAR by executing this Agreement acknowledges it has received and reviewed with its legal counsel. ROWSTAR shall fully indemnify and hold the Department harmless from any claims, demands, costs, or losses the Department may incur pursuant to the Agreement and Global Settlement as a result of ROWSTAR's construction of the Project and operation and maintenance of the Commercial Telecommunications System.

3. ROWSTAR shall be responsible, at no cost to the Department, for any property damage to any Current Utilities and Future Utilities about which ROWSTAR receives advance written notice from the Department (describing, with specificity, the use and location thereof), to the extent caused by ROWSTAR's construction, operation, or maintenance activities on the Demised Premises and ROWSTAR shall hold the Department harmless pursuant to Section 14. to the extent that Claims of property damage to such Current Utilities and Future Utilities are made by the owners of such utilities arising directly out of any act, error, omission, or negligence of ROWSTAR or its employees, agents, contractors, or subcontractors. ROWSTAR shall also hold the Department harmless pursuant to Section 14. to the extent that ROWSTAR sustains any loss or inability to realize the financial benefits it anticipates from construction and operation of the Commercial Telecommunications System as a result of the exercise of any rights of Florida Gas Transmission Company and its successors and assigns pursuant to the Agreement and Global Settlement.

Further, ROWSTAR shall hold the Department harmless pursuant to Section 14. to the extent of any claim against the Department by Florida Gas Transmission Company or its successors and assigns pursuant to the Agreement and Global Settlement, as a result of the activities of ROWSTAR pursuant to this Agreement.

8. MANAGEMENT, OPERATION AND MAINTENANCE OF THE COMMERCIAL TELECOMMUNICATIONS SYSTEM

a. **Management and Operation.** ROWSTAR shall be solely responsible for the management, operation, and maintenance of ROWSTAR's Commercial Telecommunications System on the Demised Premises. ROWSTAR shall have the right to subcontract for the management, operation, and maintenance of the Commercial Telecommunications System on the Demised Premises to a management company that meets or exceeds the experience of the personnel presented in ROWSTAR's proposal, which subcontract shall be subject to the Department's approval, in its sole discretion. Should the Department find that ROWSTAR's subcontractor is not performing its duties according to this Agreement or the subcontract between ROWSTAR and the management company, the Department may provide sixty days written notice to ROWSTAR requiring the management company's removal from its duties. If ROWSTAR's management company is removed pursuant to this paragraph, ROWSTAR shall have sixty (60) days to replace the removed management company with a management company that meets or exceeds the experience of the personnel presented in ROWSTAR's proposal. ROWSTAR shall operate the Commercial Telecommunications System constructed or installed on the Demised Premises in a safe and reliable manner, in compliance with the terms of this Agreement, and all applicable federal, state, and local governmental laws and regulations. ROWSTAR's management responsibilities include, but are not limited to the following: making diligent efforts to fulfill the wireless industry's demand for telecommunications sites by actively seeking sublessees/licensees on a competitively neutral and nondiscriminatory basis, screening applications from sublessees/licensees for site construction or installation, entering into agreements with sublessees/licensees, charging and collecting lease payments from sublessees/licensees and assuring that all sublessees/licensees comply with all requirements of this Agreement, compensating the Department in accordance with Section 6. of this Agreement. In the absence of any federal or state regulations regulating the rent that may be charged by ROWSTAR and the sharing of any capital costs associated with the construction of the Commercial Telecommunications System that can be charged by ROWSTAR, then the rent will be charged at fair market value and all rent will be fair, reasonable, nondiscriminatory and consistent with current industry practices.

If at any time the Department has reason to believe that ROWSTAR is not operating the Commercial Telecommunications System in accordance with the requirements of this Agreement, then the Department shall provide written notice to ROWSTAR and an opportunity to address and/or cure a failure to comply with the terms of this Agreement or any applicable federal, state, and local governmental laws and regulations within thirty (30) calendar days from its receipt of such notice. If ROWSTAR fails to cure any such failure within such thirty (30) days, or fails to commence and pursue the cure of any such failure that cannot be cured within such thirty (30) days, then the Department shall provide written notice to ROWSTAR as provided below for notice upon the occurrence of an Event of Default.

b. **Maintenance of Facilities.** ROWSTAR will keep and maintain the Demised Premises in good and safe condition and repair, at ROWSTAR's own expense, during the term of this Agreement and will keep the same free and clear of any and all grass, weeds, brush and debris of any kind, so as to prevent the same becoming dangerous, flammable or objectionable. The Department will have no duty to inspect or maintain any of the land, buildings or other structures in the Demised Premises during the term of this Agreement; however, the Department will have the right, upon a twenty-four (24) hour notice to ROWSTAR, to enter the property for purposes of inspection, including conducting an environmental assessment. Such assessment may include, but would not be limited to: surveying; sampling of building materials, soil, and groundwater; monitoring well installation; soil excavation; groundwater remediation; emergency asbestos abatement; operation and maintenance inspection; and, any other action that might be reasonable and necessary. The Department's right of entry will not obligate inspection of the Demised Premises by the Department, nor will it relieve ROWSTAR of its duty to maintain the Demised Premises. In the event of an emergency due to a release or suspected release of Hazardous Materials on the Demised Premises, the Department will have the right of immediate inspection and the right, but not the obligation, to engage in remedial action, without notice. ROWSTAR shall also comply with and abide by all applicable federal, state, county, municipal, and other governmental statutes, ordinances, laws and regulations affecting the maintenance of the Commercial Telecommunications System or any activity or condition on the Demised Premises. If proper maintenance has not been performed by ROWSTAR and ROWSTAR does not cure the failure within thirty (30) days of the date of its receipt of notice from the Department, then the Department may perform or have others perform such maintenance and charge the reasonable and necessary cost of such maintenance to ROWSTAR. Upon notice from the Department to ROWSTAR of such charges incurred by the Department for the performance of maintenance pursuant to this section, such charges shall become due and payable within thirty (30) days.

c. **Landscaping.** The Department may require ROWSTAR to provide the Minimal Landscaping Requirements. ROWSTAR will maintain and replace as necessary any required shrubbery and keep the Demised Premises free of litter. If local codes require landscaping, the stricter code will be applicable, so long as local requirements do not conflict with highway safety issues including, but not limited to, Department-required Clear Zones.

d. **Legal Requirements.** ROWSTAR shall comply with all applicable federal, state and local laws, rules or regulations in effect now or in the future, and applicable judicial and administrative decisions having the effect of law, of any governmental authority having jurisdiction over the Demised Premises.

e. **Replacement/Modification of Commercial Telecommunications System.** ROWSTAR may from time to time during the term of this Agreement replace or upgrade all or any portion of the Commercial Telecommunications System. The procedures established by this Agreement for design and construction of the Commercial Telecommunications System, and the rights and obligations of the Parties under this Agreement, shall apply to any replacement or modification of the Commercial Telecommunications System.

9. EMINENT DOMAIN

ROWSTAR acknowledges and agrees that its relationship with the Department under this Agreement is one of lessor and lessee and no other relationship either expressed or implied shall be deemed to apply to the Parties under this Agreement. Termination of this Agreement by the Department pursuant to the terms of this Agreement for any cause expressly provided for in this Agreement shall not be deemed a taking under any eminent domain or other law so as to entitle ROWSTAR to compensation for any interest suffered or lost as a result of termination of this Agreement, including but not limited to (i) any residual interest in the Agreement, or (ii) any other facts or circumstances arising out of or in connection with this Agreement. ROWSTAR acknowledges it has no property interest associated with this Agreement under state or federal law other than a leasehold interest under this Agreement.

10. INSURANCE

a. **Description of Insurance Required.** At its own expense, ROWSTAR shall procure and maintain throughout the duration of this Agreement, the types and amounts of insurance conforming to the minimum requirements set forth below. All insurance policies required under this Agreement shall be procured from insurers that at the time coverage commences are admitted/authorized insurers to do business in the State. ROWSTAR shall not commence Work or enter upon the Demised Premises until the required insurance is in force and evidence of insurance is acceptable to the Department. Subject to the right of the Department to request, at any time, a certified copy of the policy or policies providing any such insurance, with respect to the workers' compensation insurance, general liability insurance, automobile liability insurance and professional liability insurance, an ACORD Certificate of Insurance (which verifies inclusion of the Department as an "additional insured" in the general liability coverage, and includes thirty (30) days written notice of cancellation to Department for all coverages), shall be satisfactory evidence of insurance. Such Certificates shall provide that should any policies described therein be cancelled before the expiration date thereof, notice will be delivered to the Department by the insurer in accordance with the policy provisions regarding same. Subject to the right of the Department to request, at any time, a certified copy of the policy or policies providing any such liability insurance, with respect to property insurance, an appropriate "Evidence of Property Insurance" form (ACORD Form 27) or a copy of the policy itself shall be satisfactory evidence of insurance. Until such insurance is no longer required by this Agreement, ROWSTAR shall provide the Department with renewal or replacement evidence of insurance at least thirty (30) days prior to the expiration or termination of such insurance. Further, ROWSTAR agrees that the insurance coverage required hereunder shall not be modified in any material way without thirty (30) days advance written notice from ROWSTAR to the Department

1. **Workers' Compensation Insurance.** If legally required to provide such coverage, prior to commencing physical construction of the Project within the Demised Premises, ROWSTAR shall provide evidence of worker's compensation insurance in the amount required by law and employer's liability coverage of One Million and 00/100 Dollars (\$1,000,000.00) per occurrence, covering all persons employed by ROWSTAR in connection with ROWSTAR's operations.

2. ***General Liability Insurance.*** ROWSTAR shall obtain and maintain, at its sole cost and expense, liability insurance covering the Department as an additional insured against loss or liability in connection with bodily injury, personal injury, death, or property damage or destruction occurring on or about the Demised Premises to the extent caused by ROWSTAR's construction, operation, or maintenance of the Project, under one or more policies. The liability coverage shall extend coverage to the Department for third party bodily injury, personal injury, and property damage for which ROWSTAR is liable under this Agreement. Each policy shall be written on an occurrence basis (except for any required professional liability insurance policies, which shall be written on a claims-made basis). The insurance coverage shall be in the amount of not less than Three Million and 00/100 Dollars (\$3,000,000.00) combined single limit for bodily injury, personal injury and property damage per occurrence, which may be provided by a combination of primary and excess/umbrella coverage.
3. ***Automobile Liability Insurance.*** Such insurance shall be no more restrictive than that provided by Section II (Liability Coverage) of the standard "Business Auto Policy" (ISO Form CA 00 01), including coverage for liability contractually assumed, and shall cover all owned, non-owned, and hired autos used in connection with this Agreement. The minimum limits (inclusive of any amounts provided by an umbrella or excess policy) shall be \$3,000,000 for each occurrence, Bodily Injury and Property Damage combined.
4. ***Property Insurance.*** Prior to commencement of any physical construction of the Project within the Demised Premises, ROWSTAR shall provide evidence of builders' risk insurance in the amount of the construction cost of the Commercial Telecommunications System. Upon completion of construction of the Project and prior to commencing operations of the Commercial Telecommunications System within the Demised Premises, ROWSTAR shall provide evidence of extended or broad form coverage property insurance covering the Commercial Telecommunications System, with coverage sufficient to cover the probable maximum loss of such Commercial Telecommunications System and alterations made by ROWSTAR pursuant to the terms hereof, which shall include coverage for damage by fire and lightning, theft, vandalism and malicious mischief, or the ISO Causes of Loss - Special Form, as well as flood insurance.
5. ***Professional Liability Insurance.*** Prior to commencing physical construction of the Project within the Property, ROWSTAR shall provide evidence, in a policy reasonably acceptable to the Department, of professional liability insurance in a minimum amount of Two Million Dollars (\$2,000,000.00) for any engineering, architectural, or land surveying work required in constructing the Project on the Property, procured and maintained by those third parties performing such work for or

on behalf of ROWSTAR. ROWSTAR shall provide evidence of such required insurance coverage at all times during construction of the Project on the Demised Premises, with tail coverage for a minimum of three years after completion of the construction/installation of the Commercial Telecommunications System.

b. **Qualification of Insurers/Group Self-Insurers.** Insurers providing the insurance required by this Agreement must be:

1. authorized by subsisting certificates of authority issued to the companies by the Division of Insurance, State of Florida Department of Financial Services, or an eligible surplus-lines insurer under Florida Statute 626.918, or, with respect only to the workers'-compensation insurance, either authorized as a group self-insurer, pursuant to Florida Statute 440.572 that has been in continuous operation in the State of Florida for five years or more or authorized as a commercial self-insurance fund, pursuant to Florida Statute 624.462, that has been in continuous operation in the State of Florida for five years or more; and
2. in addition, such insurers, other than those authorized by Florida Statute 440.572 or Florida Statute 624.462, shall have and maintain throughout the period for which coverage is required a Best's Rating of "A-" or better and a Financial Size Category of "VII" or better according to A.M. Best Company.

c. **ROWSTAR's Insurance Primary.** The insurance provided by ROWSTAR and its contractors and subcontractors, including that provided to the Department as an additional insured, shall apply on a primary basis. Any insurance maintained by the Department shall be in excess of, and shall not contribute with, the insurance provided by ROWSTAR and its contractors or subcontractors. Except as otherwise specified, no self-insured retention is permitted.

d. **Insurance Is Additional Remedy.** Except as otherwise provided in this paragraph, compliance with these insurance requirements shall not limit the liability of ROWSTAR or its contractors or subcontractors. Any remedy provided to the Department by the insurance provided by ROWSTAR and its contractors or subcontractors shall be in addition to and not in lieu of any other remedy (including, but not limited to, as an indemnitee of ROWSTAR) available to the Department under this Agreement or otherwise. To the extent permitted by applicable law, the Department and ROWSTAR waive all rights against each other, and against the other's consultants, contractors, subcontractors, sub-subcontractors, agents and employees, for damages covered by property insurance obtained by either in connection with the Demised Premises. The property insurance policies obtained by ROWSTAR related to the Demised Premises from and after the Effective Date shall provide such waivers of subrogation by endorsement or otherwise.

e. **No Waiver.** Neither approval nor failure to disapprove insurance furnished by ROWSTAR or its contractors or subcontractors shall relieve ROWSTAR or its contractor or subcontractor from responsibility to provide insurance as required by this Agreement.

f. **Failure to Provide Insurance Coverage.** In the event ROWSTAR shall fail to procure insurance required under this Section or fail to maintain the same in full force and effect continuously during the Term of this Agreement and any renewal thereof or fail to meet its obligations with respect to any deductible or self-insured retention amount under this Agreement, the Department shall be entitled, after thirty (30) days prior written notice to ROWSTAR of ROWSTAR's default hereunder and ROWSTAR's failure to cure such default within said thirty (30) days, to require ROWSTAR to immediately discontinue all construction activities related to the Project and immediately discontinue operation of the Commercial Telecommunications System until ROWSTAR has provided the Department satisfactory evidence that the required insurance has been obtained and the other obligations of ROWSTAR under this section have been met. No cessation of construction or operations required by the Department under this section shall relieve ROWSTAR or the Department of any of its other obligations under this Agreement. Nothing in this provision waives any right the Department may have to assert a breach of contract claim against ROWSTAR.

g. **Notice.** As soon as practicable after the occurrence of any accident or other event that results in or might result in injury to a person or the property of any person, and that arises in any manner from performance under this Agreement or occurs on the Demised Premises, ROWSTAR shall send timely written notice thereof to all insurers and the Department, setting forth a full and precise statement of the facts pertaining thereto.

11. REMOVAL AND RELOCATION SECURITY ROWSTAR shall provide to the Department, prior to commencement of construction or installation of the Commercial Telecommunications System, security for removal or relocation of the Commercial Telecommunications System. The security shall be in the form of either a surety bond in the form in Exhibit "C", or irrevocable letter of credit which meets the requirements of Rule Chapter 14-116, Florida Administrative Code, and is in the form of Exhibit "D" or other form of security acceptable to the Department's Comptroller, and in an initial amount equal to the total cost for removal of the Work estimated to be undertaken during year one of this Agreement (both the surety bond and letter of credit referred to separately or together as the "Security"). ROWSTAR shall increase the initial amount to cover additional Work as it is added to the Commercial Telecommunications System; provided, however, the Parties will review the Work annually to determine the appropriate amount of the surety bond or irrevocable letter of credit. Within thirty (30) business days after receipt of evidence of an increase in the Work, ROWSTAR will direct the bank or surety to amend the Security to increase the amount of the Security by the amount of Work constructed and installed. The Department may draw down on the Security only if ROWSTAR has defaulted in its performance of the Work, removal or relocation of the Commercial Telecommunications System, such default is continuing after applicable notice and cure periods. In the event the Department draws down on the Security, ROWSTAR shall, within fifteen (15) business days of notice of intent to draw down or notice of draw down, reinstate the Security to its original amount immediately prior to the draw down.

12. PROPERTY TAXES AND ASSESSMENTS

a. **ROWSTAR and Sublessee/Licensee Property Taxes.** ROWSTAR shall pay and discharge as they become due promptly and before delinquency, all taxes, assessments, rates, charges, license fees, levies, excises or imposts (collectively, "Taxes"), whether general or

special, or ordinary or extraordinary, of every name, nature and kind whatsoever, imposed as a result of ROWSTAR's use or occupancy of, or conduct of business on or from, the Demised Premises or the operation of the Commercial Telecommunications System, including, but not limited to, all governmental charges of whatsoever name, nature, or kind, which may be levied, assessed, or charged, including any ad valorem, personal property, or other potentially applicable tax imposed by virtue of the provisions of law, including, but not limited to Chapters 196 or 212, Florida Statutes, that may become a lien or charge on or against the Demised Premises, ROWSTAR's interest in the Demised Premises, or any part of the Demised Premises. This section does not preclude ROWSTAR from either (a) applying for property-tax exemptions or classifications or (b) contesting in good faith either the levy or the amount of any such taxes, assessments, or other charges.

b. **Receipts.** If requested by the Department, ROWSTAR shall obtain and deliver receipts or duplicate receipts for all property taxes, assessments, and other items required hereunder to be paid by ROWSTAR, promptly on payment thereof.

c. **ROWSTAR Acknowledgment.** ROWSTAR acknowledges and agrees that payment of all property taxes and assessments, and associated interest or penalties paid by ROWSTAR, are in addition to the compensation to be provided by ROWSTAR to the Department under the terms of this Agreement and that there shall be no off-sets against the compensation because of payment of the aforesaid.

d. **Property Taxes Assessed Against the Department.** ROWSTAR shall be responsible for payment of and agrees to promptly pay any and all property taxes and assessments, and any interest and penalties relating thereto, imposed upon the Department because of the private, nongovernmental, commercial nature of ROWSTAR's use of the Demised Premises. Nonpayment by ROWSTAR of such taxes imposed on Department constitutes a Default. However, ROWSTAR shall be entitled to preserve ROWSTAR's rights to pursue in good faith an action against the entity imposing such property tax or assessment upon the Department to contest the levy or the amount (or both) of such taxes or assessments.

13. PROHIBITED INTERESTS Neither ROWSTAR nor any of its contractors, subcontractors, or consultants shall enter into any contract with one another, or arrangement in connection with the Project or any property included or planned to be included in the Project, which violates any provision of Chapter 112, Florida Statutes, relating to conflicts of interest and prohibited transactions. ROWSTAR shall further diligently abide by all applicable provisions of Florida law regulating ROWSTAR with respect to procurement, contracting, and ethics, in all material respects. ROWSTAR shall insert in all contracts entered into in connection with the Project subsequent to the date hereof, and shall hereafter require its contractors and consultants to insert in each of their subcontracts the following provision:

"ROWSTAR is governed in its contracts and transactions by provisions of Florida law relating to conflicts of interest, prohibited transactions, and ethics in government. All parties to contracts with ROWSTAR relating to this project shall familiarize themselves with Chapter 112, Florida Statutes, and with general Florida law regulating ethical requirements, prohibitions, and limitations with respect to procurement and contracts."

The provisions of this Section 13. shall not be applicable to any agreement between ROWSTAR and its fiscal depositories, or to any agreement for utility services the rates for which are fixed or controlled by a governmental entity.

14. INDEMNIFICATION

a. Subject to the terms and conditions of this Section 14., ROWSTAR shall defend, indemnify, save and hold harmless the Department and all of its officers, agents and employees, from any and all third-party claims resulting in actual losses, damages, costs, claims, demands, suits, judgments, fines, penalties, and reasonable attorneys' fees (including appellate and regulatory attorney's fees) of any kind or nature, to the extent arising directly out of any act, error, omission, or negligence by or through ROWSTAR or its employees, agents, contractors, or subcontractors, made in connection with ROWSTAR's use of the Demised Premises, or any part thereof, for ROWSTAR's construction, operation, or maintenance of the Project (a "Claim" and collectively "Claims"); provided, however, that ROWSTAR will not be liable under this subsection for any Claim to the extent arising out of any act, error, omission, or negligence by or through others, including, without limitation, the Department, or any of the Department's officers, agents, employees, or contractors. ROWSTAR's above obligation shall be triggered by the Department's written notice and tender of a Claim for defense and indemnification to ROWSTAR that is covered by this subsection. For Claims covered by this subsection, ROWSTAR shall provide counsel reasonably acceptable to the Department and pay all reasonable attorneys' fees and other litigation costs incurred to fulfill ROWSTAR's defense and indemnification obligations under this subsection. Within thirty (30) days after receiving written notice of a Claim covered by this subsection, ROWSTAR shall send written notice to the Department setting forth a statement of known facts pertaining thereto. ROWSTAR shall promptly send the Department a copy of any summons, suit, or subpoena served upon or received by ROWSTAR or any of its agents, employees, or representatives, which asserts a claim or cause of action based upon any act, error, omission, or negligence of ROWSTAR or its employees, agents, contractors, or subcontractors in connection with ROWSTAR's use of the Demised Premises, or any part thereof, for ROWSTAR's construction, operation, or maintenance of the Project. If the Department receives notice of a Claim for damages that may have arisen as a result of an act, error, omission, or negligence of ROWSTAR or its employees, agents, contractors, or subcontractors, the Department will promptly forward the Claim to ROWSTAR. The Department's failure to promptly notify ROWSTAR of a Claim will not act as or constitute a waiver of any rights of the Department under this Agreement, except to the extent that ROWSTAR is prejudiced as a result of such failure. Notwithstanding the foregoing, or anything to the contrary in this Agreement, in no event shall the requirements of this subsection be construed to provide an independent legal basis to hold ROWSTAR or the Department liable to any other person or entity for any damages, whether direct, indirect, punitive, special or consequential damages (including, but not limited to, loss of profits, interest, earnings or use) and whether arising in contract, tort or otherwise. Nothing in this subsection shall be construed as a waiver or attempted waiver by the Department of its sovereign immunity in tort under the Constitution and the laws of the State of Florida.

For the avoidance of doubt, the indemnification provided in this subsection does not include or extend to economic loss unrelated to property damage, personal injury or bodily injury, or Claims, in inverse condemnation or otherwise, brought against the Department simply by virtue of the existence of this Agreement or ROWSTAR's occupancy of the Demised Premises, or any

part thereof, for the Project as permitted by, and in accordance with, the terms of this Agreement. For example purposes only, and not as a means of limitation, a claim for damages predicated on an allegation that the Department lacks sufficient legal title to a particular portion of the Demised Premises to allow it to convey a leasehold interest therein to ROWSTAR would not be covered by the indemnification provided in this subsection.

b. ROWSTAR shall also indemnify and hold harmless the Department from any other actual losses or damages of any kind or nature to the Demised Premises or any other Department owned facility or property, to the extent arising directly out of any act, error, omission, or negligence by or through ROWSTAR or its employees, agents, contractors, or subcontractors, made in connection with ROWSTAR's use of the Demised Premises, or any part thereof, for ROWSTAR's construction, operation, or maintenance of the Project; provided, however, that ROWSTAR will not be liable under this subsection b. for any losses or damages to the extent arising out of any act, error, omission, or negligence by or through others, including, without limitation, the Department, or any of the Department's officers, agents, employees, or contractors.

c. This Section 14. shall remain in full force and effect in accordance with its terms and shall not be terminated by any breach (fundamental, negligent or otherwise) by any Party of its representations, warranties or covenants hereunder or by the expiration, termination, or rescission of this Agreement by any Party.

15. DEFAULT

a. **No Waiver.** No waiver by the Department of any breach of any obligations, covenants, or conditions herein contained, to be performed by ROWSTAR, shall be construed as a waiver of any succeeding breach of the same or any other covenant or condition, or shall impair consequent rights or remedies.

b. **Events of Default.** If the Department gives ROWSTAR written notice of the occurrence of any one or more of the events set-forth below and ROWSTAR fails to cure such event(s) within 30 days or if the event cannot be cured within such 30 days and ROWSTAR fails to commence the necessary curative action within such 30 days and fails to pursue diligently such curative action to completion, ROWSTAR shall be in "Default", which shall give rise to the Department's remedies set forth in paragraph 16 below:

1. ROWSTAR fails to make any payment to the Department when due as provided in this Agreement if such failure shall continue for a period of thirty (30) days after receipt of written notice of such failure to pay;
2. ROWSTAR fails to commence and complete construction of a specific portion of the Commercial Telecommunications System on or before the first anniversary of the Effective Date;
3. ROWSTAR abandons the Demised Premises and the abandonment lasts longer than six (6) months;
4. ROWSTAR becomes insolvent or is declared bankrupt, or files for reorganization under the bankruptcy code, or commits any act of

bankruptcy or insolvency, either voluntarily or involuntarily, or allows any final judgment for money damages to stand against it unsatisfied for a period of 365 calendar days, or makes an assignment for the benefit of creditors;

5. ROWSTAR fails to maintain the Security as required in this Agreement;
6. ROWSTAR makes a material misrepresentation or omission in any warranty, representation or other statement by ROWSTAR contained in this Agreement or any financial materials or other materials submitted by ROWSTAR to the Department; or
7. Any failure to comply with the material provisions of this Agreement or failure in the performance or observance of any of the covenants or actions required by this Agreement in any material respects beyond the cure period applicable thereto, if any (a "General Non-compliance Default"), provided, however, that ROWSTAR shall have a period of thirty (30) days following receipt of written notice from the Department within which to cure a General Non-compliance Default; provided, however, that if the General Non-compliance Default reasonably requires more than thirty (30) days to cure, ROWSTAR shall have an additional reasonable period to cure the General Non-compliance Default so long as ROWSTAR commences to cure within such thirty (30) day period and thereafter diligently prosecutes such cure to completion.
8. Any other occurrence or failure by ROWSTAR that is identified by the provisions of this Agreement.

c. The Department will give notice in writing to ROWSTAR of all events of Default.

16. **REMEDIES**

If a Default occurs, and if after applicable notice and cure periods ROWSTAR has not corrected the conditions that constitute the Default or otherwise commenced and proceeded diligently with the necessary correction, the Department shall have all rights and remedies allowed by law and under any other provision of this Agreement, as well as the rights and remedies set forth below. All rights and remedies available to the Department shall be distinct, separate and cumulative.

a. By mandamus or other proceeding at law or in equity, cause ROWSTAR to remit to the Department funds sufficient to enable the Department to cure the Default.

b. By action or suit in equity, require ROWSTAR to account for all moneys owed to the Department pursuant to this Agreement.

c. By action or suit in equity, seek to enjoin any acts or things which may be unlawful.

d. By applying to a court of competent jurisdiction, seek to cause the appointment of a receiver to manage the Commercial Telecommunications System, establish and collect fees and charges, and apply the revenues to the reduction of the obligations under this Agreement.

e. By suing ROWSTAR for payment of amounts due, or becoming due, with interest on overdue payments together with all costs of collection, including attorneys' fees.

f. In the event ROWSTAR is in Default because removal or relocation of the Commercial Telecommunications System is not complete in accordance with the requirements of this Agreement, the Department may make demand under the Security required by Section 11. and complete or cause to be completed the required Work with respect to the Commercial Telecommunications System or the removal of all Commercial Telecommunications System improvements installed on the Demised Premises.

Notwithstanding anything to the contrary contained in this Agreement, the Department shall not have the right to terminate or seek to terminate or rescind this Agreement for any Default except for a Default under Section 15.b.2. regarding ROWSTAR's failure to commence construction of a specific portion of the Commercial Telecommunications System or Section 15.b.3. regarding ROWSTAR's failure to continuously operate the Commercial Telecommunications System (each, a "Termination Event of Default"). Moreover, for a Termination Event of Default, the termination of this Agreement shall be the Department's exclusive remedy therefore. If the Department elects to terminate this Agreement for a Termination Event of Default, the Department may do so by providing 90 days advance written notice to ROWSTAR (subject to the rights of any Leasehold Mortgagee under this Agreement). ROWSTAR acknowledges and agrees to the Department's immediate right of re-entry of the Demised Premises upon the expiration or earlier termination of this Agreement.

Notwithstanding anything to the contrary in this Agreement, in no event shall ROWSTAR or the Department be liable to each other for any indirect, punitive, special or consequential damages (including, but not limited to, loss of profits, interest, earnings or use) whether arising in contract, tort or otherwise. The limitation of remedies provided in the preceding sentence shall survive the expiration or termination of this Agreement.

17. TERMINATION

Subject to the rights of any Leasehold Mortgagee under this Agreement, upon the termination or the expiration of this Agreement, this Agreement shall end, the obligation to pay Rent shall terminate and the Department and ROWSTAR shall have no further obligation or commitment under this Agreement, except as to obligations and commitments that are expressly stated to survive the expiration or termination of this Agreement.

18. PROHIBITION OF ENCUMBRANCES

Pursuant to applicable law, including, but not limited to, section 11.066(5), Florida Statutes, the Department's interest in the Demised Premises is not subject to a lien of any kind.

Except as provided below, ROWSTAR shall not allow any mortgages, liens, or other encumbrances to attach to the Demised Premises as a result of the financing or construction of the Project, or use of the Demised Premises by ROWSTAR and ROWSTAR indemnifies and agrees to hold the Department harmless of and from any such encumbrances.

19. LEASEHOLD MORTGAGES

ROWSTAR may, at its sole cost and expense and without the consent of the Department, execute, deliver and cause or permit to be recorded against ROWSTAR's interest in the Demised Premises and ROWSTAR's Commercial Telecommunications System improvements and facilities on the Demised Premises, one or more Leasehold Mortgages (as defined in this Agreement), if at the time any such Leasehold Mortgage is executed and delivered to the Leasehold Mortgagee, no Default by ROWSTAR exists or if an existing Default by ROWSTAR will be cured in connection with the Leasehold Mortgage, and upon and subject to the following terms and conditions:

a. A Leasehold Mortgage may not secure any debt issued by any person other than ROWSTAR or for any purpose other than the Project;

b. No Leasehold Mortgage or other instrument purporting to mortgage, pledge, encumber, or create a lien, charge or security interest on or against any or all of ROWSTAR's interest in the Demised Premises shall extend to or affect the fee simple interest in the Demised Premises, the Department's interest hereunder, or the Department's reversionary interest and estate in and to the Demised Premises or any part thereof;

c. The Department shall have no liability whatsoever for payment of the principal sum secured by any Leasehold Mortgage, or any interest accrued thereon or any other sum secured thereby or accruing thereunder, and, except for violation by the Department of the express obligations to the Leasehold Mortgagee set forth in this Agreement and for any remedies of the Leasehold Mortgagee provided by law, the Leasehold Mortgagee shall not be entitled to seek any damages or other amounts against the Department for any or all of the same;

d. The Department shall have no obligation to any Leasehold Mortgagee in the enforcement of the Department's rights and remedies herein and by law except as expressly set forth in this Agreement and unless such Leasehold Mortgagee has provided the Department with notice of its Leasehold Mortgage as provided in this Agreement;

e. Each Leasehold Mortgage shall provide that if an event of default under the Leasehold Mortgage has occurred and is continuing and the Leasehold Mortgagee gives notice of such event of default to ROWSTAR, then the Leasehold Mortgagee shall give notice of such default to the Department;

f. Subject to the terms of this Agreement and except as specified herein, all rights acquired by a Leasehold Mortgagee under any Leasehold Mortgage shall be subject and subordinate to all of the provisions of this Agreement and to all of the rights of the Department under this Agreement;

g. While any Leasehold Mortgage is outstanding, the Department shall not agree to any amendment to or modification of this Agreement or agree to a voluntary surrender or termination of this Agreement by ROWSTAR without the consent of the Leasehold Mortgagee;

h. Notwithstanding any enforcement of the security of any Leasehold Mortgage, ROWSTAR shall remain responsible to the Department for the payment of all sums owing to the Department under this Agreement and the performance and observance of all of ROWSTAR's covenants and obligations under this Agreement;

i. Except as expressly provided in this Agreement, a Leasehold Mortgagee shall not, by virtue of its Leasehold Mortgage, acquire any greater rights or interest in the Demised Premises than ROWSTAR has at any applicable time under this Agreement;

j. Each Leasehold Mortgagee, the Department, and ROWSTAR shall enter into a consent agreement in a form acceptable to all parties whereby all parties consent to the assignment of the Leasehold Mortgage to an agent in connection with the financing of the Leasehold Mortgage; provided that such consent agreement shall be in a customary form and shall include the rights and protections provided to the Leasehold Mortgagee in this Agreement. Nothing herein shall obligate the Department to consent to service of process in connection with any legal proceeding brought outside of Florida (or the commencement or prosecution of any legal proceeding brought outside of Florida) or enter into any agreement not governed by Florida law; and

k. Whenever a Leasehold Mortgage exists as to which the Department has been provided notice in accordance with the requirements of this Agreement, and until the obligations of ROWSTAR secured by such Leasehold Mortgage have been completely paid and performed and the Leasehold Mortgage has been discharged, the Department shall send to the Leasehold Mortgagee, by certified or registered mail, a true, correct and complete copy of any notice to ROWSTAR of a default by ROWSTAR under the Agreement at the same time as and whenever any such notice of default shall be given by the Department to ROWSTAR, addressed to Leasehold Mortgagee at the address last furnished to the Department by such Leasehold Mortgagee. No notice by the Department shall be deemed to have been given unless and until a copy thereof shall have been so given to and received by Leasehold Mortgagee.

ROWSTAR or any Leasehold Mortgagee shall notify the Department in writing of the execution of such Leasehold Mortgage and the name and place for service of notice upon such Leasehold Mortgagee. Upon such notification to the Department that ROWSTAR has entered, or is about to enter, into a Leasehold Mortgage, the Department hereby agrees for the benefit of such Leasehold Mortgagee, and within thirty (30) days after written request by ROWSTAR, to execute and deliver to ROWSTAR and Leasehold Mortgagee an agreement, in a customary form acceptable to all parties which shall include the rights and protections provided to the Leasehold Mortgagee in this Agreement. Nothing herein shall obligate the Department to consent to service of process in connection with any legal proceeding brought outside of Florida (or the commencement or prosecution of any legal proceeding brought outside of Florida) or enter into any agreement not governed by Florida law. Notwithstanding anything in this Agreement to the contrary, if there is more than one Leasehold Mortgagee, only that Leasehold Mortgagee, to the exclusion of all other Leasehold Mortgagees, which ROWSTAR or the Leasehold Mortgagee first

notified the Department of the execution of a Leasehold Mortgage, shall have the rights as a Leasehold Mortgagee under this Agreement, unless such Leasehold Mortgagee has designated in writing another Leasehold Mortgagee to exercise such rights; provided, however, that a notice to the Department of a Leasehold Mortgage may name more than one Leasehold Mortgagee and the rights referred to in this Agreement may extend to all Leasehold Mortgagees named therein if such notice is submitted by a representative of all such Leasehold Mortgagees (which representative may itself be a Leasehold Mortgagee). Any references in this Agreement to the "Leasehold Mortgagee" shall be references to the Leasehold Mortgagee or representative of more than one Leasehold Mortgagee, acting on behalf of such Leasehold Mortgagees, the notice of whose Leasehold Mortgage was earliest received by the Department unless the context otherwise requires.

20. LEASEHOLD MORTGAGEE'S RIGHT TO CURE

ROWSTAR irrevocably directs that the Department accept, and the Department agrees to accept, performance and compliance by a Leasehold Mortgagee of and with any term, covenant, agreement, provision, condition or limitation on ROWSTAR's part to be kept, observed or performed under the Agreement with the same force and effect as though kept, observed or performed by ROWSTAR. Notwithstanding anything provided to the contrary in the Agreement, the Agreement shall not be terminated because of a Termination Event of Default until and unless: (i) notice of any such Termination Event of Default shall have been delivered to Leasehold Mortgagee in accordance with the provisions of this Agreement; and (ii) the Leasehold Mortgagee has not cured such default within ninety (90) days following receipt of such notice or, (iii) if such default is curable but cannot be cured within such time period, the Leasehold Mortgagee has not notified the Department within such time period that it intends to cure such default, has not diligently commenced to cure such default, or does not prosecute such cure to completion within one hundred eighty (180) days.

Furthermore, notwithstanding anything to the contrary contained herein, if a Leasehold Mortgagee determines to foreclose or cause its designee to foreclose the Leasehold Mortgage or to acquire or cause its designee to acquire ROWSTAR's interest in the Demised Premises or to succeed or cause its designee to succeed to ROWSTAR's possessory rights with respect to the Demised Premises or to appoint a receiver before it effectuates the cure of any ROWSTAR Default, the cure periods set forth above shall be extended by any period during which foreclosure proceedings, or legal proceedings to succeed to ROWSTAR's possessory rights, or proceedings to appoint the receiver are conducted, as the case may be. Any such proceedings shall be commenced promptly after the notice of default is delivered to Leasehold Mortgagee and shall be diligently prosecuted. Promptly after Leasehold Mortgagee or a designee of Leasehold Mortgagee acquires the Demised Premises pursuant to foreclosure proceedings or otherwise or succeeds to ROWSTAR's possessory rights or promptly after a receiver is appointed, as the case may be, Leasehold Mortgagee or its designee shall cure said Default.

21. RIGHTS OF A LEASEHOLD MORTGAGEE

The Department hereby consents to the following rights of a Leasehold Mortgagee, and agrees that a Leasehold Mortgage may contain provisions for any or all of the following:

a. An assignment of ROWSTAR's share of the net proceeds from available insurance coverage or from any award or other compensation resulting from a total or partial taking of the Demised Premises by condemnation (including a Leasehold Mortgagee's right to disburse such proceeds in accordance with the terms of the Leasehold Mortgage);

b. The entry by Leasehold Mortgagee upon the Demised Premises, upon reasonable notice to the Department and ROWSTAR to view the state of the Demised Premises;

c. A Default by ROWSTAR under this Agreement being deemed to constitute a default under the Leasehold Mortgage;

d. An assignment of ROWSTAR's right, if any, to terminate, cancel, modify, change, supplement, alter, renew, or amend the Agreement;

e. The following rights and remedies (among others) to be available to Leasehold Mortgagee upon the default under any Leasehold Mortgage:

1. The foreclosure of the Leasehold Mortgage pursuant to a power of sale, by judicial proceedings or other lawful means and the sale of ROWSTAR's interest in the Demised Premises to the purchaser at the foreclosure sale and a subsequent sale or transfer of ROWSTAR's interest in the Demised Premises by such purchaser if the purchaser is a Leasehold Mortgagee or its nominee or designee; provided however, that the right of a Leasehold Mortgagee to sell or transfer ROWSTAR's interest in the Demised Premises will be subject to:

- (a) the proposed transferee (unless it is the Leasehold Mortgagee or its designee or nominee) entering into an agreement with the Department, in form and substance reasonably satisfactory to the Department, wherein the transferee acquires the rights and assumes the obligations of ROWSTAR and agrees to perform and observe all of the obligations and covenants of ROWSTAR under this Agreement;

- (b) the proposed transfer, and subsequent operation of the Project, being permitted by applicable law and being permitted by the applicable rules and regulations of all entities having jurisdiction over the Project; and

- (c) the Department's reasonable determination that the proposed transferee (unless it is the Leasehold Mortgagee or its designee or nominee) is capable of performing the obligations and covenants of ROWSTAR under this Agreement, which determination shall be based upon and take into account the following factors: (i) the financial strength and integrity of the proposed transferee, its direct or indirect beneficial owners, any proposed managers or operating partners and each of their respective affiliates; (ii) the experience of the proposed transferee or any operator to be engaged by the

proposed transferee in operating systems similar to the Commercial Telecommunications System and performing other relevant projects; (iii) the background and reputation of the proposed transferee, its direct or indirect beneficial owners, any proposed managers or operating partners, each of their respective officers, directors and employees and each of their respective affiliates (including the absence of criminal, civil or regulatory claims or actions against or initiated by any such person and the quality of any such person's past or present performance on other projects).

2. The appointment of a receiver, irrespective of whether a Leasehold Mortgage accelerates the maturity of all indebtedness secured by the Leasehold Mortgage;
3. The right of a Leasehold Mortgagee or the receiver appointed under subparagraph 2. above to enter and take possession of the Demised Premises, to manage and operate the Project, to collect the income generated by the Project or the operation thereof and to cure any default under the Leasehold Mortgage or any Default by ROWSTAR under this Agreement; or
4. An assignment of ROWSTAR's right, title and interest under the Agreement and to any deposit of cash, securities or other Demised Premises which may be held to secure the performance of all obligations of ROWSTAR to the Leasehold Mortgage, including, without limitation, the covenants, conditions and agreements contained in the Leasehold Mortgage, in the premiums for or dividends upon any insurance provided for the benefit of any Leasehold Mortgagee or required by the terms of the Agreement, as well as in all refunds or rebates of taxes or assessments upon or other charges against the Demised Premises, whether paid or to be paid;

f. If the ownership of the fee and leasehold interests of the Demised Premises become vested in the same person or entity, then as long as the Leasehold Mortgage shall remain outstanding, at Leasehold Mortgagee's option, such occurrence shall not result in a merger of title. Rather, this Agreement and the Leasehold Mortgage lien thereon shall remain in full force and effect; and

g. The Leasehold Mortgage may be assigned by Leasehold Mortgagee in accordance with its terms.

h. During any period in which the Leasehold Mortgagee itself or by an agent or a receiver or a receiver and manager is the owner, or is in control or possession of, ROWSTAR's interest in the Demised Premises, it shall be bound by all liabilities and obligations of ROWSTAR accruing under this Agreement during such period. Once the Leasehold Mortgagee goes out of possession or control of ROWSTAR's interest in the Demised Premises or transfers ROWSTAR's interest in the Demised Premises to another person in accordance with the provisions of this Agreement, the Leasehold Mortgagee shall cease to be responsible for any of ROWSTAR's

obligations under this Agreement accruing thereafter, and to the extent assumed by any transferee or any other person reasonably acceptable to the Department, for any of ROWSTAR's obligations under this Agreement accrued during the period in which the Leasehold Mortgagee itself or by an agent or a receiver and manager was the owner, or was in control or possession of, ROWSTAR's interest in the Demised Premises, and shall cease to be entitled to any of ROWSTAR's rights and benefits contained in this Agreement, except, if the Leasehold Mortgage remains outstanding, by way of security.

22. NEW LEASE AFTER TERMINATION

If the Agreement is terminated for any reason or is extinguished for any reason (including without limitation a rejection of this Agreement in a bankruptcy or other insolvency proceeding), the Leasehold Mortgagee may elect to demand a new lease of the Demised Premises (the "New Agreement") by written notice to the Department within thirty (30) days after such termination. The Department agrees, if there are outstanding obligations of ROWSTAR to the Leasehold Mortgagee, to enter into a new lease agreement of the Demised Premises with the Leasehold Mortgagee (or its designee or nominee; provided that such designee or nominee either is controlled by the Leasehold Mortgagee or meets the requirements of Section 21.e.1.(c) for the remainder of the Term of this Agreement upon all of the covenants, agreements, terms, provisions and limitations of this Agreement (the "New Agreement"), effective as of the date of such termination. The Department's obligation to enter into a New Agreement pursuant to the preceding sentence is subject to the following requirements, conditions, and provisions:

a. The New Agreement shall be for the remainder of the Term of the Agreement, effective on the date of termination, and shall contain the same covenants, agreements, conditions, provisions, restrictions and limitations as are then contained in the Agreement.

b. The New Agreement shall be executed by the Parties within thirty (30) days after receipt by the Department of notice of Leasehold Mortgagee's or such other acquiring person's election to enter into a New Agreement.

c. Any New Agreement and the leasehold estate created thereby shall, subject to the same conditions contained in the Agreement, continue to maintain the same priority as the Agreement with regard to any Leasehold Mortgage or any other lien, charge or encumbrance affecting the Demised Premises. Concurrently with the execution and delivery of the New Agreement, the Department shall assign to the tenant named therein all of its right, title and interest in and to moneys, if any, then held by or payable to the Department which ROWSTAR would have been entitled to receive but for the termination of the Agreement.

d. If ROWSTAR refuses to surrender possession of the Demised Premises, the Department shall, at the request of Leasehold Mortgagee or such other acquiring person, institute and pursue diligently to conclusion the appropriate legal remedy or remedies to oust or remove ROWSTAR and all other occupants who are not authorized to remain in possession under this Agreement. Any such action taken by the Department at the request of Leasehold Mortgagee or such other acquiring person shall be at Leasehold Mortgagee's or such other acquiring person's sole expense.

The provisions of this Section 22. shall survive the expiration or earlier termination of this Agreement.

23. REPRESENTATIONS

- a. ROWSTAR warrants, represents and covenants that:
 - 1. ROWSTAR is duly organized, validly existing and in good standing under the laws of the jurisdiction of its organization and is duly qualified to conduct business in the State.
 - 2. ROWSTAR has full power and authority to enter into this Agreement and to comply with the provisions of this Agreement.
 - 3. This Agreement has been duly authorized, executed and delivered by ROWSTAR and constitutes a valid and legally binding obligation of ROWSTAR, enforceable against ROWSTAR in accordance with the terms hereof.
 - 4. No consent is required to be obtained by ROWSTAR from, and no notice or filing is required to be given by ROWSTAR to or made by ROWSTAR with, any person (including any governmental authority) in connection with the execution, delivery and performance by ROWSTAR of this Agreement. The foregoing does not apply to the necessary licenses, permits, and other approvals to be applied for by ROWSTAR in connection with the Project.
 - 5. ROWSTAR currently is not the subject of bankruptcy, insolvency, or reorganization proceedings and is not in material default of, or otherwise subject to, any agreement or any law, administrative regulation, judgment, decree, note, resolution, charter or ordinance which would currently restrain or enjoin it from entering into, or complying with, this Agreement, in any material respect.
 - 6. There is no material action, suit, proceeding, inquiry or investigation, at law or in equity, before any court or public body, pending or, to the best of ROWSTAR's knowledge, threatened, which seeks to restrain or enjoin ROWSTAR from entering into or complying with this Agreement.
 - 7. That the execution, delivery, and performance of this Agreement will not conflict with, be inconsistent with, or result in any breach or default of any of the terms, covenants, conditions, or provisions of any indenture, bank loan, credit agreement, or other agreement or contract of any kind or nature to which ROWSTAR is a party or by which ROWSTAR may be bound.
- b. The Department warrants, represents and covenants that:
 - 1. The Department has the power and authority to enter into this Agreement

and to do all acts and things and execute and deliver all other documents as are required under this Agreement to be done, observed or performed by it in accordance with the terms hereof. The Department has approved the execution and delivery of this Agreement and authorized the performance of its obligations hereunder.

2. This Agreement has been duly authorized, executed and delivered by the Department and constitutes a valid and legally binding obligation of the Department, enforceable against the Department in accordance with the terms hereof.
3. No consent is required to be obtained by the Department from, and no notice or filing is required to be given by the Department to or made by the Department with, any person (including any governmental authority) in connection with the execution, delivery and performance by the Department of this Agreement.
4. The Department has owned and maintained the Demised Premises in compliance, in all material respects, with all applicable laws and the Department is not in breach of any applicable law that would have a material adverse effect on the Demised Premises or this Agreement.
5. There is no action, suit or proceeding, at law or in equity, or before or by any governmental authority, pending nor, to the best of the Department's knowledge, threatened against the Department which would (a) have a material adverse effect on the Demised Premises or (b) materially affect the validity or enforceability of this Agreement.
6. There are no pending or threatened claims known to the Department arising out of hazardous substances or otherwise arising under environmental laws that could have a material adverse effect on the Demised Premises or this Agreement.
7. To the best of the Department's knowledge, there have not been any environmental enforcement actions in the past and none are threatened or pending that could have a material adverse effect on the Demised Premises or this Agreement.
8. The Department currently is not the subject of bankruptcy, insolvency, or reorganization proceedings and is not in material default of, or otherwise subject to, any agreement or any law, administrative regulation, judgment, decree, note, resolution, charter or ordinance which would currently restrain or enjoin it from entering into, or complying with, this Agreement, in any material respect.
9. The execution, delivery, and performance of this Agreement will not

conflict with, be inconsistent with, or result in any breach or default of any of the terms, covenants, conditions, or provisions of any indenture, bank loan, credit agreement, or other agreement or contract of any kind or nature to which the Department is a party or by which the Department may be bound.

24. MISCELLANEOUS

a. **Payment of Tolls.** All vehicles required by ROWSTAR to service, supply, inspect or otherwise conduct its operations, including vehicles operated by employees and/or suppliers and distributors commuting to and from the Demised Premises, shall pay such tolls as are prescribed by the Department or other transportation authority.

b. **Advertising Signs.** No third-party advertising signs of any kind are permitted on the Demised Premises.

c. **Laws, Ordinances, Licenses and Permits.**

1. ROWSTAR shall comply at all times with all federal, state, and local laws and ordinances, rules and regulations concerning building design and construction/installation, safety, health, fire codes, sanitary codes, employee license requirements, and all other legal requirements that may be applied to ROWSTAR as a result of this Agreement. If any governmental entity with jurisdiction over ROWSTAR, other than the Department, renders an administrative decision or has rendered in its favor a judicial decision having the effect of law, that ROWSTAR's operations on the Demised Premises are out of compliance with its applicable laws, rules, or regulations, such noncompliance will constitute a default under this Agreement (subject to applicable notice and cure periods, and subject to ROWSTAR's right to contest and/or appeal any such decision).
2. ROWSTAR, at its sole expense, will obtain and maintain all permits and licenses necessary for the construction/installation, operation and maintenance of the Commercial Telecommunications System and to conduct its business under this Agreement, including, but not limited to, all local zoning permits, if applicable.
3. ROWSTAR agrees and warrants that in the performance of the Agreement, it will not discriminate or permit discrimination against any person or group of persons on the grounds of race, color, sex, religion, or national origin in any manner prohibited by the laws of the United States or the State of Florida.

d. **Construction Carried Out by the Department.** It is expressly understood and agreed by ROWSTAR that the Department shall have the right at any time during the term of this Agreement to make roadway improvements in and around the Demised Premises. Prior to construction of such roadway improvements, the Department will provide notice to ROWSTAR

to allow for an orderly adjustment, if necessary or useful, to ROWSTAR's operations. During any such construction ROWSTAR acknowledges and agrees that there shall be no reduction in compensation to the Department, and that the Department shall be under no obligation to ROWSTAR for any monetary losses of ROWSTAR or those of any party claiming by or through ROWSTAR associated with any work carried out by the Department or its contractors during such roadway improvements.

e. **Safety.** Construction/installation of ROWSTAR's Commercial Telecommunications System and operation, maintenance, and repair of the Commercial Telecommunications System shall be performed and arranged in a manner that will not interfere with the convenient, safe and continuous use, or the maintenance and improvement, of the public roadways located on or adjacent to the Demised Premises.

f. **Warranty of ROWSTAR.** ROWSTAR warrants that it has not employed or retained any company or person, other than a bona fide employee, professional, or consultant working for ROWSTAR, to solicit this Agreement and that it has not paid or agreed to pay any company or person, any fee, commission, percentage, brokerage fees, gifts or any other consideration contingent upon or resulting from the award or making of this Agreement in violation of applicable law. For breach or violation of this warranty, the Department may terminate and cancel this Agreement without incurring any liability therefore.

g. **Notices.** All notices, demands, or other writing required to be given or made or sent, or which may be given or made or sent, by either party hereto to the other, shall be deemed to have been fully given or made or sent when made in writing and either personally delivered by hand or by a nationally recognized overnight courier or deposited in the United States mail, registered or certified and postage prepaid, and addressed as follows:

To the Department: Florida Department of Transportation
Attn: ITS Telecommunications Administrator
2740 Centerview Drive, Suite 3B
Tallahassee, FL 32301

With a copy to: Florida Department of Transportation
Attn: Secretary
605 Suwannee Street
Tallahassee, FL 32399-0450

With a copy to: Florida Department of Transportation
Attn: General Counsel
605 Suwannee Street, MS 58
Tallahassee, FL 32399-0450

To ROWSTAR: ROWSTAR, LLC
Attn: Stacy Frank
3841 W. Kennedy Blvd., Suite #3
Tampa, FL 33609

With a copy to:

Gina Grimes, Esquire
Hill Ward Henderson
3700 Bank of America Plaza
101 E. Kennedy Blvd
Tampa, FL 33602

The address to which any notice, demand or other writing may be given or made or sent to any party as provided above may be changed by written notice given by such party as above provided.

h. **Construction.** This Agreement and all rights and obligations arising thereunder shall be governed by and construed in accordance with the laws of the State of Florida.

i. **Force Majeure.** In the event that ROWSTAR's construction or operations of its Commercial Telecommunications System hereunder shall be interrupted, or prevented, by reason of Force Majeure, ROWSTAR shall be excused for that period of such delay or interruption.

j. **Entire Agreement.** This Agreement, with all its exhibits and amendments, together with the Plans, constitute the entire understanding of and contract between the parties with respect to the matters covered by this Agreement, and no other agreement, contract, statement or promise made by any party or to any employee, officer, or agent of any party that is not contained in this Agreement shall be binding or valid.

k. **Severance Clause.** Any portion of this Agreement declared invalid shall be severed from the remainder, which shall then be read independently of the stricken portion. The Department and ROWSTAR shall endeavor in good-faith negotiations to replace the invalid, illegal, or unenforceable provision with valid provisions the economic effect of which comes as close as possible to that of the invalid, illegal, or unenforceable provision.

l. **Venue.** The parties to this Agreement hereby understand and agree that the venue for any action that may arise as a result of this Agreement shall be in Leon County, Florida.

m. **Effect of Government Regulations.** ROWSTAR shall comply with all current or future state and federal governmental regulations relating to the construction/installation, maintenance and operation and maintenance of ROWSTAR's Commercial Telecommunications System on the Demised Premises.

n. **Amendments.** No provision of this Agreement may be amended or added to except by an agreement in writing signed by both Parties hereto.

o. **Public Records.** If ROWSTAR is a "contractor" for the purposes of Section 119.0701, Florida Statutes, ROWSTAR shall comply with public records laws and specifically shall:

1. Keep and maintain the public records that ordinarily and necessarily would be required to be kept and maintained by the Department in order to perform the services identified herein.

2. Provide the public with access to those public records on the same terms and conditions that the Department would provide the records and at a cost that does not exceed the cost provided by law.
3. Ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law.
4. Meet all requirements for retaining the public records and transfer, at no cost, to the Department all the public records in possession of ROWSTAR upon termination of this Agreement and destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. All such public records (if any) stored electronically must be provided to the Department in a format that is compatible with the information technology systems of the Department.

If ROWSTAR fails during such times to comply with a public records request, the Department shall enforce this section in accordance with this Agreement.

ROWSTAR shall otherwise allow public access to all documents, papers, letters or other materials, made or received by ROWSTAR in connection with this Agreement and the lease of the Demised Premises, to the extent such access is required because such documents, papers, letters or other materials are subject to the provisions of s. 24(a) of the State Constitution or Chapter 119, Florida Statutes.

p. **Intellectual Property.** Neither party shall have or acquire hereunder any right whatsoever in any intellectual property right (e.g., patent, copyright, mask work, trademark, trade name, logo, trade secret, service mark, or know-how) of the other party as a result of this Agreement, and nothing in this Agreement is intended or shall be construed as a transfer, grant, license, release or waiver of any intellectual property right of either party, in any country.

q. **Section 287.133(3)(a), Florida Statutes.** Section 287.133(3)(a), Florida Statutes, requires that ROWSTAR be informed of the following provisions of section 287.133(2)(a), Florida Statutes: "A person or affiliate who has been placed on the convicted vendor list following a conviction for a public entity crime may not submit a bid on a contract to provide any goods or services to a public entity, may not submit a bid on a contract with a public entity for the construction or repair of a public building or public work, may not submit bids on leases of real property to a public entity, may not be awarded or perform work as a contractor, supplier, subcontractor, or consultant under a contract with any public entity, and may not transact business with any public entity in excess of the threshold amount provided in section 287.017, F.S., for Category Two for a period of thirty-six (36) months from the date of being placed on the convicted vendor list.

r. **Illegal Aliens.** The Department shall consider the employment knowingly by ROWSTAR of unauthorized aliens a violation of section 274(e) of the Immigration and Nationalization Act. Such violation shall be cause for unilateral cancellation of this Agreement.

s. **Rights of Third Parties.** This Agreement shall not create any third-party beneficiary hereunder, nor shall this Agreement authorize anyone not a party hereto to maintain a suit against the Department pursuant to the terms of this Agreement.

t. **Successors and Assigns.** This Agreement shall be binding upon the successors, assigns and legal representatives of ROWSTAR and the Department.

u. **Conflict of Law.** In any instance of conflict arising out of the interpretation of federal, state and local laws governing the construction, operation, maintenance, and management of the Demised Premises, the most stringent will govern.

v. **Document Approval.** Approval by the Department of any documents required to be submitted by ROWSTAR under the terms of this Agreement does not create any liability on the part of Department for the suitability or adequacy of such submittals.

w. **Exhibits and Submittals.** All Exhibits attached to this Agreement are made a part hereof as if fully copied herein. All submittals required to be submitted by ROWSTAR that are approved by the Department are by reference made a part of this Agreement as if fully copied herein.

x. **Adequate Opportunity to Review** ROWSTAR acknowledges that it has reviewed this Agreement, is familiar with its terms, and has adequate opportunity to review this Agreement with legal counsel of ROWSTAR's choosing. ROWSTAR has entered this Agreement freely and voluntarily. The Department acknowledges that it has reviewed this Agreement, is familiar with its terms, and has adequate opportunity to review this Agreement with legal counsel of the Department's choosing. The Department has entered this Agreement freely and voluntarily.

y. **No Waiver of Sovereign Immunity.** Nothing in this Agreement or in any documents executed pursuant to the terms of this Agreement shall be construed as a waiver or attempted waiver by the Department of its sovereign immunity in tort under the Constitution and laws of the State of Florida.

z. **Counterparts.** This Agreement may be executed in two or more counterparts and duplicate originals which have been signed and delivered by each of the Parties (a party may execute a copy of this Agreement and deliver it by e-mail transmission; provided, however, that any such party shall promptly deliver an original signed copy of this Agreement).

aa. **Radon Gas.** "RADON GAS: Radon is a naturally occurring radioactive gas that, when it has accumulated in a building in sufficient quantities, may present health risks to persons who are exposed to it over time. Levels of radon that exceed federal and state guidelines have been found in buildings in Florida. Additional information regarding radon and radon testing may be obtained from your county health department."

bb. **Estoppel Certificates.** Each of the Parties shall, from time to time, upon thirty (30) days' written request, provide to the requesting party or any other person identified by the requesting party with an estoppel certificate stating whether the other party is in default hereunder, whether this Agreement is in full force and effect, whether this Agreement has been

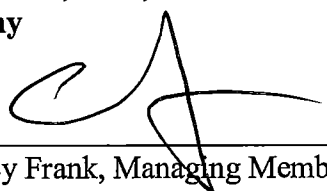
modified, and containing such other certifications as may be reasonably requested.


cc. **Survival.** The provisions of subsections l., o., s. and y. of this Section 24. shall survive the expiration or earlier termination of this Agreement.

The remainder of this page intentionally left blank.

IN WITNESS WHEREOF, the parties hereto have caused these presents to be executed in their respective names as of the day, month and year first above written.

ROWSTAR, LLC, a Florida limited liability company

By: 
Stacy Frank, Managing Member

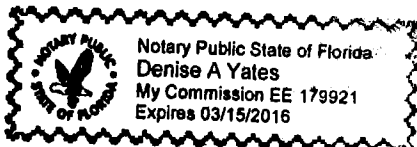

Witness #1 Print Name: Max Bailes

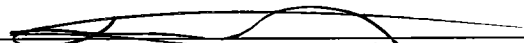

Witness #2 Print Name: Taylor Loch

STATE OF FLORIDA
COUNTY OF HILLSBOROUGH

The foregoing instrument was acknowledged before me this 4th day of December, 2014, by Stacy Frank as Managing Member of ROWSTAR, LLC, a Florida limited liability company, on behalf of the company. She is personally known to me or has produced _____ as identification.

NOTARY PUBLIC




Name: Denise A. Yates
My Commission Expires: 3/15/16
State of Florida
My Commission Expires: EE 179921
(Seal) 58

STATE OF FLORIDA, DEPARTMENT OF
TRANSPORTATION

By: Brian J. Prasad
Ananth Prasad, P.E.
Secretary

Beth Lee
Witness #1 Print Name: Beth Lee

Harold C. Bass
Witness #2 Print Name: Harold C. Bass

Legal Review:

Stephanie Burton

STATE OF FLORIDA
COUNTY OF LEON

I HEREBY CERTIFY that on this day, before me, an officer duly authorized in the State of Florida aforesaid and in the County aforesaid to take acknowledgments, personally appeared Ananth Prasad, well known to me to be Secretary of the Florida Department of Transportation, who is personally known to me, and that he acknowledged executing the same on behalf of the State of Florida in the presence of two subscribing witnesses freely and voluntarily under authority duly vested in him by said State.

WITNESS my hand and official seal in the County and State last aforesaid this 4th
day of December, 2014.

Jennifer L. Parfitt
Signature of Notary



JENNIFFER L. PARFITT
MY COMMISSION # FF 005193
EXPIRES: August 4, 2017
Bonded Thru Budget Notary Services

Jennifer L. Parfitt
Name of Notary
Commission Number: FF 005193
My Commission Expires: 8/4/17

EXHIBIT A
To
STATE OF FLORIDA, DEPARTMENT OF TRANSPORTATION
LEASE AND OPERATING AGREEMENT

DEMISED PREMISES

Depiction and Description

The Demised Premises includes all Department owned right-of-way found in Districts 1, 4, 5, and 7, excluding Florida's Turnpike Enterprise right-of-way upon which ROWSTAR may lease, sublease and construct, operate, and maintain the Commercial Telecommunications System. The Agreement shall be amended promptly upon completion of construction of each specific Commercial Telecommunications System and upon the Department's receipt of the survey required under Section 7.d.5. of the Agreement, which amended description shall reflect the actual Demised Premises for each site location.

EXHIBIT B

To

STATE OF FLORIDA, DEPARTMENT OF TRANSPORTATION

LEASE AND OPERATING AGREEMENT

Description of Commercial Telecommunications System

The Commercial Telecommunications System shall be comprised of existing and/or to be constructed structures designed and/or capable of housing/accommodating the placement, collocation, construction, repair, replacement, operation and maintenance of wireless antenna, microwave dishes, radio equipment, coax and other types of related hardware, related equipment, cabinets, shelters, and other ancillary infrastructure necessary for and/or used in the transmission and/or reception of wireless voice, WiFi and data communications.

EXHIBIT C

To

STATE OF FLORIDA, DEPARTMENT OF TRANSPORTATION

LEASE AND OPERATING AGREEMENT

Form of Surety Bond

KNOW ALL MEN BY THESE PRESENTS:

That _____ (the "Contractor") has entered into a contract with the Florida Department of Transportation (the "Department") bearing the date of _____, for developing, designing, financing, operating and maintaining the Commercial Telecommunications System (the "Project") in Districts 1, 4, 5 and 7, excluding Florida's Turnpike Enterprise right-of-way, bearing Financial Management # _____ (the "Contract"); and

That the Contractor is an entity duly authorized to do business in the State of Florida (the "State") and having its principal place of business at _____ [Street Address, City, State, Zip and Phone #] and has entered into the Contract for the construction and installation of the Project; and

That the Contractor and _____ (the "Surety"), duly authorized to do business in the State, having its principal place of business at _____ (Home Office Address) are held and firmly bound unto the Contractor, in the full and just sum of _____ lawful money of the United States of America (US\$ _____) [*Note: insert amount as required under Section _____ of the Contract*], to whom payment well and truly will be made, we bind ourselves, our heirs, executors, administrators, successors and assigns, jointly and severally and firmly by these presents;

WHEREAS, it was one of the conditions of the Contract that these presents shall be executed;

NOW, THEREFORE, the conditions of this obligation are such that if, during the term of this bond, Contractor shall faithfully, promptly, efficiently and fully perform in accordance with the obligations of the Contract, and further if the Contractor shall promptly pay all State Workers' Compensation and Unemployment Compensation taxes incurred in the performance of the Contract obligations and shall be liable to the Department in a civil action instituted by the Department or any officer of the Department authorized in such cases for double any amount in money or property the Department may lose or be overcharged or otherwise defrauded of, by reason of any wrongful or criminal act, if any, of the Contractor, its agents, and employees, then this obligation shall be void; otherwise, it shall remain in full force and effect.

Should the Contractor be declared to be in default of its obligations under the Contract, the Surety shall pay the Department all costs assessed against the Contractor because of the default(s) which were not withheld from Contract proceeds, and upon the Department's demand, the Surety shall take over performance of the Contract obligations; provided, however, that in the event the

Department elects to have the Surety take over performance of the Contract obligations, the Surety may not select the Contractor or any affiliate of the Contractor to perform the Contract obligations for and on behalf of the Surety without the Department's express written consent.

The Surety shall be fully liable under this bond up to the full penal sum hereof, regardless of any modifications (of whatever amount) to the Contract amount.

This bond shall remain in full force and effect through _____, after which it shall expire.

WITNESS the signature of the Contractor and the signature of the Surety by _____ its
_____ (Agent or Attorney-in-Fact) with the seals of said Contractor and Surety
hereunto affixed this _____ day of _____, _____.

Complete the following as appropriate

Contractor (Entity Name)*
Authorized Signature: _____
*Signature: _____
Printed Name: _____
* _____
Title: _____
(Seal)

*Include the signature and printed name of each partner required to be affixed per partnership agreement.

Principal shall record this bond in the official records of the Clerk of Court of the county where the improvement is located prior to commencing the work.

Send "Notices to Owner" to:

Organized and existing under the laws of the State of _____ and authorized to do business in the State of Florida, pursuant to the laws of the State of Florida.	
Countersigned: _____ Florida Licensed Insurance Agent Print information below (Florida Licensed Insurance Agent; whether in Attorney-in-Fact or Countersignature role): Name: _____ Business Address: _____ Telephone: _____	Surety Company Name (Print) (Seal) By: _____ Florida Licensed Insurance Agent or Attorney-in-Fact (Surety) <input type="checkbox"/> Above Signatory is also a Florida Licensed Insurance Agent (check if applicable and complete business name, address and telephone number block; if not, have such an agent countersign and complete block). NOTE: Power of Attorney showing authority of Surety's Agent or Attorney-in-Fact is to be attached.

EXHIBIT D

To

STATE OF FLORIDA, DEPARTMENT OF TRANSPORTATION

LEASE AND OPERATING AGREEMENT

Form of Irrevocable Letter of Credit

IRREVOCABLE STANDBY LETTER OF CREDIT

ISSUER:

PLACE FOR PRESENTATION OF DRAFT: (Name and Address of Bank/Branch --
MUST be United States address)

APPLICANT:

BENEFICIARY: STATE OF FLORIDA, DEPARTMENT OF TRANSPORTATION
OFFICE OF COMPTROLLER
MS 42B, 605 SUWANNEE STREET
TALLAHASSEE, FLORIDA 32399

LETTER OF CREDIT NUMBER:

PLACE AND DATE OF ISSUE:

AMOUNT: US\$ _____

EXPIRATION DATE:

The Issuer issues this Irrevocable Standby Letter of Credit in favor of the State of Florida, Department of Transportation, for any sum or sums up to the aggregate amount of _____ United States Dollars (US\$ _____), available by draft at sight drawn on the Issuer. Any draft under this Letter of Credit shall:

1. Identify this Irrevocable Standby Letter of Credit by the name of the Issuer, and the Letter of Credit number, amount, and place and date of issue; and
2. State one of the following:

"This drawing is due to _____ (Contractor's name) _____ failure to perform certain obligations under the agreement _____ (include Permit #, Project # or Contract # as applicable) _____ between _____ (Contractor's name) _____ and the State of Florida, Department of Transportation."

or

or

All drafts will be honored if presented to _____ (Name & United States Address) on or before (Expiration Date) or any extended expiration date.

By: _____ (Authorized signature of Issuer)

EXHIBIT E

To

STATE OF FLORIDA, DEPARTMENT OF TRANSPORTATION

LEASE AND OPERATING AGREEMENT

Projected Revenues

Fiscal Year (July 1 – June 30)	Anticipated Annual Lease Payment to FDOT
2014-2015	\$116,280
2015-2016	\$517,523
2016-2017	\$1,311,684
2017-2018	\$2,445,102
2018-2019	\$3,853,243
2019-2020	\$5,570,395
2020-2021	\$7,567,223
2021-2022	\$9,818,803
2022-2023	\$12,356,820
2023-2024	\$15,216,956
2024-2025	\$19,919,880



Florida Department of Transportation

RICK SCOTT
GOVERNOR

605 Suwannee Street
Tallahassee, FL 32399-0450

ANANTH PRASAD, P.E.
SECRETARY

DELEGATION OF AUTHORITY

I, Ananth Prasad, P.E., Secretary of the Florida Department of Transportation, delegate to Brian A. Blanchard, as the Assistant Secretary for Engineering and Operations, Richard M. Biter, as the Assistant Secretary for Intermodal Systems Development, and Brian F. Peters, as the Assistant Secretary for Finance and Administration, the authority and responsibility to take action on my behalf at anytime during my absence from the Department headquarters in Tallahassee. I also rescind any prior delegations to the contrary.

Ananth Prasad, P.E., Secretary
Florida Department of Transportation

5-16-14

Date

EXHIBIT

2

STATE OF FLORIDA, DEPARTMENT OF TRANSPORTATION

LEASE AND OPERATING AGREEMENT

FOR COMMERCIAL TELECOMMUNICATIONS SYSTEMS

THIS LEASE AND OPERATING AGREEMENT FOR COMMERCIAL TELECOMMUNICATIONS SYSTEMS ("Agreement"), effective this 29 day of December, 2016, between the STATE OF FLORIDA, DEPARTMENT OF TRANSPORTATION, an agency of the State of Florida, as lessor ("Department"), and ROWSTAR, LLC, a Florida limited liability company, as lessee ("ROWSTAR")(each a "Party" and collectively referred to as the "Parties").

RECITALS

A. The Department is authorized by section 337.251, Florida Statutes, to lease the use of Department property to public agencies or private entities to further economic development and generate revenue for transportation. The Department retains the authority pursuant to 47 U.S.C. § 253(c) to manage the public rights-of-way and to require fair and reasonable compensation from telecommunications providers, on a competitively neutral and non-discriminatory basis, for the use of public rights-of-way.

B. The Department advertised a Request for Proposals ("RFP") on October 23, 2015 for the leasing of rights-of-way and real property owned by the Department in Districts 2, 3 and 6, excluding the Florida's Turnpike Enterprise rights-of-way, to be used for the purposes of constructing, operating, and maintaining Commercial Telecommunications Systems.

C. Three proposals were submitted in response to the RFP. ROWSTAR's proposal was determined to be responsive to the RFP and based on competitively neutral and non-discriminatory criteria ROWSTAR's proposal was selected as the best value proposal for the Department. The Department is willing to lease to ROWSTAR portions of its right-of-way described in this Agreement for the purposes stated in this Agreement and, in return, ROWSTAR shall provide fair and reasonable compensation to the Department.

AGREEMENT

In consideration of the mutual covenants and promises set forth in this Agreement and for other good and valuable consideration, the receipt and sufficiency of which is acknowledged, the Parties agree that the foregoing recitals are true and correct and are incorporated as part of this Agreement and the Parties further agree as follows:

1. DEFINITIONS

As used herein, the following terms shall have the meaning indicated unless the context requires a different meaning:

a. **"Agreement"** shall mean this Lease and Operating Agreement for Commercial Telecommunications Systems.

b. **"Clear Zone"** shall mean the lateral area adjacent to roadway travel lanes which must remain unobstructed, as determined by the Department in accordance with its applicable standards.

c. **"Commercial Telecommunications System"** shall mean existing and new structures to be constructed, operated and/or maintained by ROWSTAR, which ROWSTAR intends to locate in the Demised Premises, as more fully described in Exhibit B. The term shall also mean existing and new structures constructed, operated and/or maintained within the Demised Premises by third parties for the purposes and uses described in Exhibit B. Unless the context requires otherwise, in this Agreement the term shall mean specifically the portions of the Commercial Telecommunications System that are located within the Demised Premises, which may include existing and new structures constructed, operated and/or maintained by ROWSTAR and subleased by ROWSTAR to third party telecommunications and wireless providers of mobile services for the purpose of installing, operating and maintaining telecommunication antenna, coax and related equipment. The term "Commercial Telecommunications System" may have a singular or a collective meaning depending upon the context with which it is used. By way of example, the term may refer only to a specific structure that is a part of the Commercial Telecommunications System located within the Demised Premises or it may refer to the entire Commercial Telecommunications System that may be developed within the Demised Premises throughout the term of this Agreement.

d. **"Contract Manager"** shall mean the Department's Contract Manager responsible for overseeing the administration of this Agreement for the Department. The State Administrator for Property Management shall be the Department's Contract Manager.

e. **"Default" or "Event of Default"** shall mean an event described in Section 15.b.

f. **"Demised Premises"** shall mean the right-of-way described and depicted in Exhibit A, as such description may be amended in accordance with this Agreement.

g. **"Department"** shall mean the State of Florida, Department of Transportation, an agency of the state.

h. **"Effective Date"** shall mean the date on which this Agreement has been fully executed and delivered to both Parties.

i. **"Engineering Drawings"** shall mean the construction drawings and plans and specifications for construction of the Commercial Telecommunications System to be located within the Demised Premises, including (but not limited to) site plans depicting the locations of the vertical support structures and other facilities, point(s) of access, and utility locations, all as prepared or caused to be prepared by ROWSTAR and approved by the Department in accordance with this Agreement.

j. **“Force Majeure”** shall mean an event caused by natural disaster; act of God; act of terrorism; government-declared emergencies; or an act of military authority, war, or civil disorder; provided that such causes are beyond the reasonable control and without the willful act, fault, failure or negligence of the party whose performance is affected by the Force Majeure event; and, provided, further, that the party whose performance is affected by the Force Majeure event continues to make reasonable efforts to perform.

k. **“Hazardous Materials”** shall mean petroleum, or any fraction thereof, asbestos, polychlorinated biphenyls, or any other substance identified either as a “hazardous substance,” “hazardous waste,” “pollutant,” “contaminant” or similar term in any applicable federal, state or local law or regulation, as such law or regulations may be now or hereafter amended.

l. **“Leasehold Mortgage”** is a mortgage or other similar security agreement given to any Leasehold Mortgagee of the leasehold interest of ROWSTAR under this Agreement, and shall be deemed to include any mortgage or trust indenture under which this Agreement shall have been encumbered, and including any and all renewals, modifications, advances, additions, and extensions of or to a Leasehold Mortgage.

m. **“Leasehold Mortgagee”** is a public or private lending source or institution, federal, state, county or municipal governmental agency or bureau, bank, savings and loan, pension fund, insurance company, real estate investment trust, tax credit syndication entity, or other real estate investment or lending entity, savings bank, whether local, national or international, and/or the holder of any purchase money mortgage given back to a transferor, that is or becomes the holder, mortgagee or beneficiary under any Leasehold Mortgage and the successors or assigns of such holder, mortgagee or beneficiary, and shall be deemed to include, without limitation, the trustee under any such trust indenture and the successors or assigns of such trust. A parent, subsidiary, affiliate, division, or entity controlling, controlled by, or under common control with ROWSTAR shall not be a “Leasehold Mortgagee” for the purposes of this Agreement. **“Lodestar Agreement”** means that Lease and Operating Agreement for Commercial Wireless Telecommunications between the Department and Lodestar Towers, Inc., as amended.

n. **“Minimal Landscaping Requirements”** shall mean landscaping required by Department, which may include plantings around the base of vertical support structures for the Commercial Telecommunications System consistent with Department current landscaping requirements for Department rights-of-way.

o. **“Project”** means the design, construction, operation and maintenance of a specific portion of the Commercial Telecommunications System located within the Demised Premises.

p. **“Project Manager”** shall mean the project manager and contact person that ROWSTAR is required to have at all times under Section 7.a.

q. **“Qualified Professionals”** shall mean professionals providing services hereunder who are licensed in their respective disciplines by the State of Florida, Department of

Business and Professional Regulation and who hold any other licensures required by any governmental authority with jurisdiction over the Commercial Telecommunications System.

r. **"ROWSTAR"** shall mean ROWSTAR, LLC, a Florida limited liability company.

s. **"Term"** shall mean the term of this Agreement as set forth in Section 5. Below.

t. **"Work"** shall mean all labor, materials and incidentals required for the construction, installation and testing of the Commercial Telecommunications System, including superintendence, use of equipment and tools, and all services and responsibilities prescribed or implied that are necessary for the complete performance by ROWSTAR of the construction requirements under this Agreement at ROWSTAR's sole expense.

2. AGREEMENT; LEGAL AUTHORITY; DETERMINATIONS

a. **The Agreement.** This Agreement, together with its exhibits and all approved Engineering Drawings, sets forth the terms and conditions upon which the Department leases to ROWSTAR certain Department property. ROWSTAR shall comply with, and shall cause its employees, contractors, subcontractors, sublessees, and agents to comply with, all terms and conditions set forth herein.

b. **Legal Authority for Agreement.** This Agreement is entered into pursuant to the Department's express legislative authority under Section 337.251, Florida Statutes.

c. **Department Determinations.** As of the date of its execution of this Agreement, the Department makes the following determinations:

1. The lease of Department property pursuant to this Agreement will constitute a lease of Department property for commercial purposes that will further economic development in the state, provide fair and reasonable compensation to the state, and generate revenue for transportation.
2. The reservations, restrictions, and conditions in this Agreement are necessary to ensure adequate protection for safe and efficient operation and maintenance of all affected transportation and utility facilities, the adequacy of traffic flow on the affected rights-of-way, and the full use of existing and future state transportation facilities.
3. The commercial use of the Demised Premises pursuant to the terms of this Agreement will not interfere with the state's primary transportation needs or with present or future utility needs for the Demised Premises.

4. The commercial use of the Demised Premises pursuant to the terms of this Agreement will serve and further, and will not be contrary to, the best interests of the public.
5. Under this Agreement, the Demised Premises have a permanent transportation use related to the responsibilities of the Department or have the potential for such future transportation uses and therefore, the Demised Premises are not available for sale as surplus property.
6. This Agreement constitutes a complex lease transaction involving extensive capital improvements by ROWSTAR. Therefore, under Subsection 337.251(4) of Florida Statutes, this Agreement is not the type of lease governed by Section 337.25, Florida Statutes.
7. The lease of the Demised Premises pursuant to the terms of this Agreement:
 - (a) Is in the public's best interest;
 - (b) Does not require that state funds be used; and
 - (c) Has adequate safeguards in place to ensure that additional costs are not borne and service disruptions are not experienced by the traveling public and residents of the state in the event of default by ROWSTAR or upon termination or expiration of this Agreement.

**3. DEMISE, DESCRIPTION, AND USE OF DEMISED PREMISES;
PROHIBITION ON LIENS; ACCESS; LIMITATIONS ON ROWSTAR'S RIGHTS**

a. **Grant of Lease, Description of the Demised Premises.** Upon the terms and conditions of this Agreement, the Department hereby grants to ROWSTAR for the uses described in Paragraph 3.c. below, and for the Term, as defined in Section 5, the following leasehold rights:

1. the exclusive right to lease the non-limited access rights-of-way within the Demised Premises located in the Department's Districts 2, 3, and 6 and depicted in Exhibit "A"; and
2. a non-exclusive right to lease the limited access rights-of-way within the Demised Premises located in the Department's Districts 2, 3, and 6 and depicted in Exhibit "A".

ROWSTAR acknowledges and agrees that its right to lease the Department's rights-of-way shall be non-exclusive only as to the limited access rights-of-way and such right shall coexist with the non-exclusive right to lease the limited access rights-of-way set forth in the Lodestar Agreement. ROWSTAR shall not have any right to lease Florida's Turnpike Enterprise rights-of-way.

The Demised Premises consists of parcels of land within the Department rights-of-way as described and depicted in Exhibit "A". The description of the Demised Premises provided in Exhibit "A" is intended to identify potential locations where ROWSTAR shall have the exclusive right to lease, sublease and to construct, operate, and maintain the Commercial Telecommunications System within the Department owned non-limited access rights-of-way in Districts 2, 3, and 6, excluding Florida's Turnpike Enterprise rights-of-way and is also intended to identify potential locations where ROWSTAR shall have a non-exclusive right to lease, sublease and to construct, operate, and maintain the Commercial Telecommunications System within the Department owned limited access rights-of-way in Districts 1, 4, 5, and 7, excluding Florida's Turnpike Enterprise rights-of-way. The Parties acknowledge that final design and construction of the Commercial Telecommunications System may require adjustment of the description of the Demised Premises and agree to amend the description to reflect the actual Demised Premises that are leased to ROWSTAR under this Agreement. Upon completion of construction of each specific Commercial Telecommunications System and upon provision of the survey required under Section 7.d. of this Agreement, ROWSTAR and the Department shall amend Exhibit "A" to accurately describe the Demised Premises. The right to adjust or amend the description of the Demised Premises is intended to provide a mechanism to allow for minor site specific revisions to the location of the Commercial Telecommunications System based on conditions on the ground as may be agreed to by the Department and ROWSTAR, but shall not be construed to conflict with the other terms of this Agreement.

b. **Present Condition.** ROWSTAR acknowledges that it is leasing the Demised Premises in "as-is" condition, without warranty of title. ROWSTAR has inspected the Demised Premises to the extent desired by ROWSTAR and is satisfied with the physical condition of the Demised Premises. Except as otherwise expressly set forth in this Agreement, the Department has not made and does not make any representations or express or implied warranties as to the physical condition or any matter or thing affecting or pertaining to the Demised Premises or its suitability for ROWSTAR's intended use, and ROWSTAR expressly acknowledges and agrees to take the Demised Premises "AS IS." ROWSTAR EXPRESSLY RELEASES THE DEPARTMENT FROM ANY LIABILITY, WARRANTY, OR OBLIGATION TO ROWSTAR RELATING TO THE CONDITION OF THE DEMISED PREMISES, SPECIFICALLY INCLUDING: LATENT AND PATENT CONDITIONS; ZONING; PERMITTING; SUBSOIL CONDITIONS; STORMWATER DRAINAGE CONDITIONS; THE EXISTENCE OR CONDITION OF ANY UTILITIES; HAZARDOUS WASTES, SUBSTANCES, AND MATERIALS, OR POLLUTANTS, AND ANY AND ALL OTHER MATTERS RELATING TO THE PHYSICAL CONDITION OF THE DEMISED PREMISES; THE PROVISIONS OF THIS SECTION 3.b. SHALL SURVIVE THE EXPIRATION OR EARLIER TERMINATION OF THIS AGREEMENT.

c. **Use of the Demised Premises.** ROWSTAR's use of the Demised Premises is limited to the leasing of the Demised Premises for the purpose of constructing, operating and maintaining ROWSTAR's Commercial Telecommunications System and subleasing/licensing the Demised Premises and the Commercial Telecommunications System to third party wireless carriers, on a competitively neutral and non-discriminatory basis, for the installation, operation and maintenance of wireless antenna, coax, and related equipment.

The right to construct, operate, and maintain the Commercial Telecommunications System shall not be construed as authorizing ROWSTAR to install, operate, or maintain utilities or other infrastructure that ROWSTAR may lease or resell for the provision of services to third parties who are not Federally licensed wireless providers or ROWSTAR's contractors/vendors engaged in the construction, operation, or maintenance of the Commercial Telecommunications System. All other rights in and to the Demised Premises are retained by the Department. ROWSTAR shall not use the Demised Premises in any manner that would unreasonably obstruct or interfere with any transportation facilities existing as of the Effective Date unless the same is expressly permitted and described elsewhere in this Agreement, provided that the operation of the Commercial Telecommunications System in accordance with the Engineering Drawings shall not be deemed to be an unreasonable obstruction or interference. ROWSTAR will not use or occupy the Demised Premises for any unlawful purpose and will, at ROWSTAR's sole cost and expense, conform to and obey any applicable ordinances and/or rules, regulations, requirements, and orders of governmental authorities or agencies with jurisdiction over the use and occupation of the Demised Premises. ROWSTAR shall obtain, at ROWSTAR's sole cost and expense, any and all permits or licenses required by applicable law to operate and maintain any facility or equipment constructed by or installed through ROWSTAR on the Demised Premises as part of the Commercial Telecommunications System. The Department (at no cost to the Department) shall reasonably cooperate with ROWSTAR in connection with ROWSTAR obtaining all such permits and licenses. For any such permits and licenses to be issued by or through the Department, the Department shall work in good faith to expedite the issuance thereof at no charge to ROWSTAR.

The Department further hereby covenants that, subject to the terms of this Agreement, ROWSTAR and its sublessees/licensees shall have peaceful and quiet enjoyment of the Demised Premises for the installation, use and operation of the Commercial Telecommunications System during the full Term and any renewals thereof, without interruption or interference by the Department or any person claiming by, through, or under the Department. ROWSTAR acknowledges and agrees that ROWSTAR's exclusive right to possession of the Demised Premises during the Term of this Agreement will be subject to: (i) the Department's access rights expressly provided for in this Agreement; (ii) the rights of third parties under any permits, leases, easements, or other right to locate, operate, or maintain utilities within the Demised Premises as of the Effective Date and under any permits for utilities issued after the Effective Date, subject to the terms of Sections 3.e. and 7.g. hereof; (iii) any rights expressly reserved by the Department's grantors in documents recorded in the Public Records of each affected county in Florida, or expressly reflected or indicated on the Department's right-of-way maps, as of the Effective Date; (iv) the rights of third parties under any permits, leases, easements, or other right to locate, operate, or maintain Commercial Telecommunications Systems that were issued or became effective prior to the Effective Date; and (v) the right and authority of any police, fire and emergency services and any other security or emergency personnel, including the armed forces, and any governmental authority with jurisdiction over the Demised Premises to access the Demised Premises as necessary for fire and rescue services, emergency management and homeland security purposes, including the prevention of, or response to, a public safety emergency. ROWSTAR shall cooperate with police, fire and emergency services and any other security or emergency personnel, including the armed forces, with respect to their exercise of emergency management and homeland security powers. Any entry by the Department or the

State onto the Demised Premises required or permitted under this Agreement shall not constitute a reentry, trespass, or a breach of the covenant for quiet enjoyment contained in this Agreement.

The Department acknowledges and agrees that ROWSTAR's exclusive right to lease the non-limited access rights-of-way within the Demised Premises for the purpose of constructing, operating, and/or maintaining the Commercial Telecommunications System is a right that shall be superior to and to the exclusion of any right by any third party, with two exceptions noted in the immediately following sentence, to construct, operate and maintain Commercial Telecommunications System in the Demised Premises, which right exists only for the Demised Premises located in the Department's Districts 2, 3, and 6, excluding Florida's Turnpike Enterprise right-of-way and the limited access rights-of-way. However, ROWSTAR's exclusive right to lease non-limited access rights-of-way within the Demised Premises for the purpose of constructing, operating, and/or maintaining the Commercial Telecommunications System is subject to and inferior to: (i) the rights of third parties under any permits, leases, easements, or other right to locate, operate, or maintain Commercial Telecommunications Systems in the non-limited access rights-of-way within the Demised Premises that were issued or became effective prior to the Effective Date; and (ii) the right of the Department in the future to grant the right to other governmental entities to locate, operate or maintain structures designed and/or capable of housing/accommodating the placement, collocation, construction, repair, replacement, operation and maintenance of wireless antenna, microwave dishes, radio equipment, coax and other types of related hardware, related equipment, cabinets, shelters, and other ancillary infrastructure necessary for and/or used in the transmission and/or reception of wireless voice, WiFi and data communications, when such structures are only to be used for non-commercial purposes. With respect to the limited access rights-of-way, ROWSTAR shall have a non-exclusive right to lease such limited access rights-of-way and such non-exclusive right to lease shall coexist with the non-exclusive right to lease the limited rights-of-way as set forth in the Lodestar Agreement. The Parties acknowledge and agree that ROWSTAR's exclusive right to lease the non-limited access rights-of-way portions of the Demised Premises will ensure a more organized method of developing the Commercial Telecommunications System, which will enhance the benefits to be derived by the Department from this Agreement.

Any construction of the Commercial Telecommunications System shall be performed and arranged in a manner which will not unreasonably interfere with the Department's use of the Demised Premises with respect to the convenient, safe, and continuous use, or the maintenance and improvement, of the public right-of-way located on or adjacent to the Demised Premises and in accordance with the terms of any special permits issued for construction and maintenance of the Commercial Telecommunications System or other safety related matters.

The Department reserves the right to maintain, expand, or otherwise modify any transportation facility and require ROWSTAR to relocate and/or remove its structures or equipment accordingly. The Department shall provide ROWSTAR written notice at least six (6) months prior to the date ROWSTAR is required to relocate and/or remove its structures and equipment. However, if an emergency situation arises that presents an immediate safety risk to the Department's transportation facilities or the public, which requires the immediate relocation and/or removal of ROWSTAR's structures or equipment then immediately upon gaining knowledge of the emergency situation, the Department shall provide written notice to ROWSTAR that ROWSTAR must immediately relocate and/or remove its structures or

equipment due to the emergency situation. Alternatively, if such an emergency situation requires the Department to take immediate action, then the Department may enter the site specific lease area of the Demised Premises to relocate and/or remove ROWSTAR's structures or equipment without providing notice and the opportunity for ROWSTAR to take action. ROWSTAR shall be solely responsible for all costs associated with the relocation and/or removal of its structures or equipment due to the maintenance, expansion or modification of a transportation facility or due to an emergency situation. If ROWSTAR does not relocate and/or remove its structures or equipment in accordance with the Department's notice, then the Department may enter the site specific lease area of the Demised Premises to relocate and/or remove ROWSTAR's structures and equipment. ROWSTAR shall reimburse the Department for all costs associated with the relocation and/or removal of ROWSTAR's structures or equipment that are incurred by the Department. If a site specific lease is no longer available because it interferes with the Department's ability to maintain, expand or otherwise modify its transportation facilities, the Department has the right to unilaterally terminate the site specific lease. ROWSTAR shall follow the process for obtaining approval of a site specific lease contained within this Agreement in obtaining a replacement site specific lease in the event a site specific lease is terminated.

d. **Identification and Approval of Sites.** ROWSTAR shall identify potential sites for construction or installation of the Commercial Telecommunications System and submit a Preliminary Request to Lease ("Preliminary Request") by email to the Contract Manager. The Preliminary Request shall identify the latitude and longitude coordinates of all potential sites, provide a surface street map with the approximate locations of potential sites clearly and neatly marked, and identify any existing structure(s) that may need to be replaced by ROWSTAR to accommodate the structural and/or height requirements of the Commercial Telecommunications System.

For the purposes of this section of the Agreement, if any deadline for the Department to respond is initially calculated to occur on a weekend or a State holiday, then the deadline for the Department to respond shall instead occur on the next day the Department's offices are open for business.

Upon request by ROWSTAR, the Department shall provide ROWSTAR with any documentation in the Department's possession that may indicate whether the Department has sufficient ownership interest at the potential sites for placement of Commercial Telecommunication Systems. ROWSTAR, in its sole discretion, may have surveys, title searches or other services performed to assist in the determination of the extent of the Department's ownership interests at potential sites. ROWSTAR is solely responsible for the costs of any surveys, title searches, and/or other services it requisitions to assist in the determination of the extent of the Department's ownership interests at potential sites related to this Agreement. The Department is not obligated to perform any surveys or title searches as part of the determination of the Department's ownership interests at potential sites. Within thirty (30) calendar days of receipt of the Preliminary Request, the Department shall make a preliminary determination as to whether the Department has sufficient ownership interest in the potential sites for the placement of Commercial Telecommunications Systems.

After the Department has made a preliminary determination as to whether the Department has sufficient ownership interest in the potential sites, site visits to the potential sites may be

scheduled. The Department, in its sole discretion, shall determine whether a site visit shall be performed. If the Department determines a site visit shall be performed, then the Department and ROWSTAR shall meet within thirty (30) calendar days of the Department's preliminary determination that the Department has a sufficient ownership interest at each potential site requested by ROWSTAR in the Preliminary Request. The site visit shall be used in order to verify latitude and longitude coordinates, identify any existing structures that may require replacement, identify the approximate extent of the Department's right of way, and to identify any other potential issues that may interfere with or affect the site location(s).

After the site visits are complete, ROWSTAR shall submit a Summary of Field Review ("Summary of Field Review") to supplement the Preliminary Request. If the Department does not require a site visit, then ROWSTAR shall submit a Summary of Field Review any time after the Department notifies ROWSTAR that a site visit is not required. The Summary of Field Review is part of the Preliminary Request. The Summary of Field Review shall contain the agreed upon latitude and longitude coordinates for each site as identified in the field, a surface street map with the approximate locations of potential sites clearly and neatly marked, documentation that shows the Department has title to property at the potential sites sufficient for placement of the Commercial Telecommunication Systems, right of way maps indicating whether the right of way in the location of the potential site(s) is non-limited access or limited access, type of structures needed or structures to be replaced, power/utility requirements, an estimated time period for due diligence and special requirements for each site.

The Department shall review the Summary of Field Review. Within thirty (30) calendar days of receipt of the Summary of Field Review, the Department shall issue a Preliminary Site Approval ("Preliminary Site Approval"), provide ROWSTAR with comments and requested changes, or issue a Rejection of Preliminary Request. If the Department provides comments or requests changes to the Summary of Field Review, ROWSTAR shall make the applicable changes and resubmit the Summary of Field Review, as amended. Within thirty (30) calendar days of receipt of the amended Summary of Field Review, the Department shall issue a Preliminary Site Approval, provide ROWSTAR with additional comments and requested changes, or issue a Rejection of Preliminary Request.

If five (5) or more Summary of Field Reviews are pending within a single Department District subject to this Agreement, then the Department shall have an additional ten (10) calendar days to respond to each of those Summary of Field Review located in that District by issuing a Preliminary Site Approval, providing ROWSTAR with comments and requested changes, or issuing a Rejection of Preliminary Request. The Department and ROWSTAR may also mutually agree to extend or suspend the deadline for the Department to respond to a particular Summary of Field Review.

Once ROWSTAR has obtained a Preliminary Site Approval, it must complete its due diligence efforts and submit its Final Request to Lease ("Final Request") by email to the Contract Manager. The Final Request must comply with the following: i) all criteria set forth in this Agreement, ii) the Department's Utility Accommodation Manual and any subsequent amendments thereto (collectively, the "UAM"); (provided, however, the Parties agree that the review and approval schedules set forth in this Agreement shall control) and iii) all federal, state, and local regulations. Additionally, the site may not be located in a median, shall be located as

close to the outer edge of the Department's right-of-way boundary as practical and in accordance with the offsets identified in the UAM, as amended, and will not be placed in locations that require new barriers to maintain a safe Clear Zone. The Final Request shall include the following:

1. Latitude and longitude coordinates identifying the site location(s);
2. A key map showing the proposed location and the approximate distance and direction from the proposed work area to the nearest town, major road intersection, bridges, or railroad crossings;
3. Plan view drawings (preferably to scale) that are signed and sealed by a Professional Engineer licensed in Florida, showing all of the following:
 - a) The right-of-way boundary lines, limited access lines, or easement lines;
 - b) The proposed commercial telecommunications structure and appurtenances, and horizontal and vertical locations of each, along with minimum vertical clearance above the top of the pavement or existing unpaved ground;
 - c) Cross-sections to adequately reflect the proposed installation's location
 - d) Signed and sealed plans and specifications for proposed attachments to structures suitable for inclusion in the Florida Bridge Management Inventory System file including a bridge load rating analysis where attachments affect the bridge's carrying capacity;
 - e) Justification and drawings showing proper replacement of the roadway for any open trenching, pavement cuts, or water supply line conflicts;
 - f) The horizontal distance from the proposed structure and appurtenances to a well-defined feature of the transportation facility (such as the edge of a travel lane);
 - g) A tie to roadway/railroad mileposts, or stationing (where available);
 - h) The limits of the work area (including staging, access points, or other areas to be used);
 - i) The proposed method of installation, materials, function, type, and size of proposed installation;
 - j) Horizontal and vertical aboveground features such as existing utility poles within the work area;
 - k) Horizontal and vertical underground facilities such as utilities, drainage pipes, or intelligent transportation system lines within the proposed work area as can reasonably be obtained by a review of existing records and a topographical survey of above ground features;

- l) Significant physical features such as vegetation, wetlands, or bodies of water;
 - m) Method of proposed site access for construction and maintenance;
 - n) Provide appropriate dimensions to determine where access will intersect with the edge of pavement;
4. Signed and sealed plans and specifications for proposed attachments to structures, and equipment installation details (and if applicable signed and sealed plans and specifications for the replacement structure). The designs shall comply with current revisions of TIA222 "Structural Standard for Antenna Supporting Structures and Antennas" and the Florida Building Code local wind loading requirements;
 5. Federal Communications Commission licenses and approval, if applicable;
 6. Federal Aviation Administration hazard to aviation study and approval, if applicable;
 7. Maintenance of Traffic plans, signed and sealed by a Professional Engineer licensed in Florida;
 8. Radio Interference analysis obtained from ROWSTAR.

The Department shall process all Final Requests in accordance with Section 120.60, Florida Statutes, the requirements of the UAM, as amended, and subject to the schedules set forth in this section of the Agreement. Upon receipt of a complete Final Request that contains all required items as set forth above, the Department shall, within thirty (30) calendar days of such receipt, either issue its final approval of the site ("Final Approval"), issue a Rejection of Final Request, or provide ROWSTAR with comments and requested changes. If the Department provides comments or requests changes to the Final Request, ROWSTAR shall make the applicable changes and resubmit the Final Request, as amended. Within thirty (30) calendar days of receipt of the amended Final Request, the Department shall issue a Final Approval, provide ROWSTAR with additional comments and requested changes, or issue a Rejection of Final Request. The Final Approval issued by the Department may contain work restrictions or special requirements that must be complied with and addressed by ROWSTAR prior to installation or construction of the Commercial Telecommunications System.

If five (5) or more Final Requests are pending within a single Department District subject to this Agreement, then the Department shall have an additional ten (10) calendar days to respond to each Final Request located in that District by issuing a Final Approval, providing ROWSTAR with comments and requested changes, or issuing a Rejection of Final Request. The Department and ROWSTAR may also mutually agree to extend or suspend the deadline for the Department to respond to a particular Final Request.

The Department shall review the Final Request and proposed work for all of the following:

1. Completeness
2. Compliance with the UAM, as amended;
3. Impacts to all of the following:
 - a) Public safety;
 - b) Revenue generation;
 - c) The Department's Five Year Work Program;
 - d) Safety improvement projects;
 - e) Department maintenance activities;
 - f) Scenic enhancement projects;
 - g) Landscape projects;
 - h) Local events and activities;
 - i) Easements;
 - j) Placement of future utilities.

With respect to the design of the Commercial Telecommunications System, prior to the completion of the Plans (as defined in this Agreement), the Department reserves the right to request adjustments to structures or improvements as the Department reasonably deems necessary for the protection of public health, safety, or welfare, or as may be required by a State or Federal agency with jurisdiction over the Property or the Project, or include additional instructions to address site specific or transaction specific conditions not addressed in the UAM, as amended, by written notice to ROWSTAR setting forth in reasonable detail the adjustments being requested. The Parties shall meet within ten (10) business days after ROWSTAR's receipt of such notice in order to discuss the requested adjustments and determine a mutually satisfactory resolution, failing which the Parties shall proceed pursuant to the dispute resolution procedure set forth in Section 7.

The Parties acknowledge and agree that the Final Approval shall be deemed to be a site specific lease, which acknowledges that ROWSTAR is leasing that specific portion of the Demised Premises ("Site"), and that pursuant to the Final Approval, ROWSTAR may sublease the Site to third party wireless carriers for the uses set forth in section 3.c., above.

e. Physical Access for Operation and Maintenance and Emergencies from other Department Property. The Department will review and approve ROWSTAR's

requests for access to Department right-of-way as part of its approval of the Engineering Drawings for the Commercial Telecommunications System. Only authorized employees, subcontractors, and agents of ROWSTAR and of its subleases/licenses shall have access to the Commercial Telecommunications System sites.

f. **Utilities.** ROWSTAR and its sublessees/licensees shall be solely responsible for the acquisition and payment of utility services required for construction, operation, and maintenance of the Commercial Telecommunications System, including, but not limited to, power and communications services. Any utilities providing services to ROWSTAR or its sublessees/licensees shall apply to the Department for a utility permit under Rule Chapter 14-46, F.A.C. to install facilities on the Department's right-of-way. Additionally, ROWSTAR agrees that the Commercial Telecommunications System are not utilities under Section 337.401, Florida Statutes, and, therefore, ROWSTAR is never entitled to reimbursement for the cost of relocation of the Commercial Telecommunications System.

For purposes of this section, the Parties agree that ROWSTAR shall not be required to apply for and/or to obtain a Utility Permit for the construction, operation and maintenance of the Commercial Telecommunications System. A Utility Permit shall be required only for those utilities, if any, that must be installed to serve each Commercial Telecommunications System.

ROWSTAR acknowledges that the Department may have issued permits or other authorization for the installation and maintenance of utilities within the Demised Premises and, under current law, is required to continue to issue permits for the installation and maintenance of utilities within the Demised Premises in accordance with the Department's rules. The Department, and the owners of any utilities existing as of the Effective Date, may install, permit, design, manage, maintain, inspect, repair and rehabilitate any of their existing utilities (whether provided by the Department, the State or third parties) in, on, under, across, over or through the Demised Premises (including water and sewer lines, power transmission lines, fiber optic cable, surveillance equipment and other communications), upon reasonable notice in compliance with the Department's rules. ROWSTAR or its sublessees/licensees shall have the right, but not the obligation, at all times during the Term of this Agreement, to install, design, manage, maintain, repair, and rehabilitate utilities or other services for its own account or its sublessees/licensees (and not for ROWSTAR to lease or resell for the provision of services to third parties who are not Commercial Telecommunications System passengers or ROWSTAR's contractors/vendors engaged in the construction, operation, or maintenance of the Commercial Telecommunications System) to the extent that the said utilities or services are necessary or desirable for the Commercial Telecommunications System. The rights of ROWSTAR under this Agreement are at all times expressly subject to the rights and requirements specified in the "Agreement and Global Settlement" between the Department and Florida Gas Transmission Company, LLC dated August 21, 2013.

g. **Liens.** Pursuant to applicable law, including, but not limited to, section 11.066(5), Florida Statutes, the Department's interest in the Property is not subject to a lien of any kind. ROWSTAR shall not allow any mortgages, liens, or other encumbrances to attach to the Demised Premises as a result of the financing or construction of the Commercial Telecommunications System, or use of the Demised Premises by ROWSTAR and ROWSTAR indemnifies and agrees to hold the Department harmless of and from any such encumbrances.

h. **Recording.** This Agreement (or a memorandum hereof) and the legal descriptions of the Demised Premises may be recorded by ROWSTAR at its sole option and expense.

i. **Reservation of Rights.** The Department reserves for itself, the State, and all grantees, licensees, permittees, and others claiming by, through, or under the Department or the State, the right at all times during the Term of this Agreement to enter the Demised Premises at all reasonable times and upon reasonable prior notice. The reservation of a right by the Department to enter upon the Demised Premises and perform any act shall not be deemed to impose any obligation on the Department to do so; make the Department responsible to ROWSTAR or any third party for the failure to do so; or relieve ROWSTAR from any of its obligations under this Agreement.

4. OWNERSHIP

a. **Department Property.** During the term of the Agreement, the fee ownership of the Demised Premises, consisting of Department real property, and all improvements, fixtures and appurtenances placed thereon by the Department, including all Department transportation facilities and other Department structures existing as of the Effective Date, shall be and remain at all times in the name of the Department.

b. **ROWSTAR Property.** During the Term of this Agreement, ROWSTAR shall own all facilities, equipment and improvements constructed on the Demised Premises as part of the Commercial Telecommunications System (exclusive of any wireless antenna, coax, and related equipment installed, operated and maintained by ROWSTAR's sublessees/licensees, which shall be owned by the sublessees/licensees wireless providers installing such antenna, coax, and related equipment as part of the Commercial Telecommunication System). ROWSTAR agrees that the Commercial Telecommunications System constructed or installed on the Demised Premises shall be at its risk only and that the Department shall not be liable for loss or damage to the Commercial Telecommunications System caused by the act of any person, except to the extent caused by an Event of Default by the Department (as hereinafter defined) or by a tortious act or omission of the Department, its agents, or its employees, but with respect to tort claims for loss or damage, only to the extent the Legislature has by law waived the Department's sovereign immunity in tort under the Constitution and laws of the State of Florida.

c. **Existing and Replacement Property.** During the term of this Agreement, the Parties acknowledge and agree that existing Department structures may be used and incorporated by ROWSTAR into the Commercial Telecommunications System, provided such structures are approved by the Department for ROWSTAR's use through the Identification of Sites process as outlined in Section 3.d. of this Agreement. ROWSTAR acknowledges and agrees that the inclusion of any existing structure into the Commercial Telecommunications System shall be subject to and occur in a manner that will not interfere with the Department's use of such structures. If ROWSTAR or the Department determines that a structure must be replaced to meet the structural and or height requirements of the Commercial Telecommunications System, ROWSTAR shall have the right to replace such structure ("Replacement Structure"). The Replacement Structure will be designed to accommodate the

Department's use of such structure as well as ROWSTAR and its sublessee's/licensee's uses of such structure.

The Department shall retain ownership of any existing structure used and incorporated in the Commercial Telecommunications System subject to ROWSTAR and its sublessee's/licensee's rights to use and occupy such structure as part of the Commercial Telecommunications System. ROWSTAR shall retain ownership of any Replacement Structure subject to the Department's use and occupancy of such structure during the term of this Agreement. Upon termination or expiration of this Agreement, the ownership and removal of a Replacement Structure shall be governed by sections 4.d. and 4.e below, whichever is applicable

d. **Removal of ROWSTAR Property Upon Expiration.** Subject to the rights of any Leasehold Mortgagee under this Agreement, upon the termination or expiration of the Term of this Agreement, at no cost to the Department, and unless the Department notifies ROWSTAR in writing at least thirty (30) calendar days prior to the date of expiration not to remove the facilities owned by ROWSTAR, ROWSTAR shall remove its Commercial Telecommunications System and all related structures and equipment and shall restore the Demised Premises where such improvements have been removed to the condition that existed as of the Effective Date within ninety (90) calendar days after the termination or expiration of this Agreement, and restoration of the Demised Premises shall not be accomplished in a manner that adversely impacts any utilities installed under a Department issued permit after the Effective Date. The Department shall provide ROWSTAR with reasonable access to the Property for ROWSTAR to complete actions permitted and/or required by this section. The terms and provisions of this section shall survive the expiration or earlier termination of this Agreement until completion of such removal and restoration.

e. **Conveyance of ROWSTAR Property to the Department.** Subject to the rights of any Leasehold Mortgagee under this Agreement, if ROWSTAR is not required to remove the Commercial Telecommunications System upon the termination or expiration of the Term, the Commercial Telecommunications System (exclusive of any wireless antenna, coax and related equipment installed, operated and maintained by ROWSTAR's sublessees/licensees) shall be conveyed by ROWSTAR to the Department, at no cost to the Department, and free and clear of any liens, contract rights, or encumbrances of any kind and nature.

5. **TERM**

The term of this Agreement shall be for ten (10) years, beginning on the date of full execution of this Agreement (the "Effective Date," and the ten year period from the Effective Date shall be the "Initial Term"), unless sooner terminated in accordance with the terms of this Agreement. Provided this Agreement is in full force and effect and provided that at the time of exercise ROWSTAR is using the Demised Premises for the Commercial Telecommunications System and that ROWSTAR is not in default under this Agreement (subject to Force Majeure Events), ROWSTAR shall have the right to renew this Agreement for four (4) additional terms of ten (10) years each (each a "Renewal Term"), under the same terms and conditions, by delivering a written notice of its intention to renew this Agreement to the Department no later than one hundred eighty (180) calendar days before the end of the current term. The "Initial

Term” and each “Renewal Term” (if any) are collectively referred to as the “Term” throughout this Agreement.

6. RENT

a. ROWSTAR shall compensate the Department for use of the Demised Premises by payment of 55% of the annual gross revenues generated by each sublease/sublicense executed by ROWSTAR for space within the Demised Premises. The term “gross revenues” is defined as that term is defined under the Generally Accepted Accounting Principles (“GAAP”). The gross revenues shall include gross billable earned revenue on an accrual basis for revenues earned under this Agreement with the effective date being the date on which accrual of revenues begins. Gross revenues also includes services utilized for ROWSTAR’s internal use and will have an implied value at the current market rate which will be no less than that rate charged to any sublessee/licensee.

b. ROWSTAR shall make annual rent payments to the Department in advance on or before each sublease/sublicense start and annual anniversary date while this Agreement is in place. ROWSTAR shall notify the Department each time a new sublease/sublicense agreement is executed or amended and shall maintain and provide to the Department on a quarterly basis a cumulative schedule listing all agreements, start and anniversary dates and associated gross revenues thereof.

c. If gross revenues meet or exceed the projections for each fiscal year as set forth in Exhibit “E”, ROWSTAR shall pay the Department additional bonuses as follows:

1. \$500,000 on or before July 1, 2021.
2. \$600,000 on or before July 1, 2022.
3. \$700,000 on or before July 1, 2023.
4. \$800,000 on or before July 1, 2024.
5. \$900,000 on or before July 1, 2025.
6. \$1,000,000 on or before July 1, 2026.

These bonus payments are in addition to the annual gross revenues paid to the Department, and shall not be used to offset any payments due from ROWSTAR to the Department.

d. ROWSTAR shall, at a minimum, provide to the Department within ninety (90) calendar days of the end of each fiscal year (July 1-June 30) throughout the term of this Agreement, a statement of the gross revenues, expenditures, and net profit related to the subleases/sublicenses issued by ROWSTAR under this Agreement for the immediately preceding fiscal year, which shall include a reconciliation of verified gross revenue amounts paid to the Department. ROWSTAR shall cause the statements to be verified by an independent certified public accountant that is reasonably acceptable to the Department, at no cost to the Department.

The independent certified public accountant shall issue an opinion as to the accuracy of the amounts reported. This requirement to provide an annual, verified statement of gross revenues paid shall be in addition to any other obligations set forth in this Agreement and shall in no way limit or excuse ROWSTAR from such obligations.

Records of gross revenues and costs incurred under this Agreement shall be maintained and made available upon request to the Department at all times during the term of this Agreement and for five (5) years after the Department's receipt of final gross revenues pursuant to this Agreement. Records of gross revenues and costs incurred shall include ROWSTAR's general accounting records and the project records, together with supporting documents and records of ROWSTAR and all subleases/sublicenses, and all other records of ROWSTAR and subleases/sublicenses considered necessary by the Department for a proper audit of project costs. The Department shall be entitled at all times to be advised, at its request, as to the status of work being done by ROWSTAR and of the details thereof. Either party to this Agreement may request and be granted a conference.

7. CONSTRUCTION OF THE COMMERCIAL TELECOMMUNICATIONS SYSTEM

a. **Project Manager.** ROWSTAR shall have appointed at all times a Project Manager, who shall have complete supervisory responsibility for all ROWSTAR construction and installation activities within the Demised Premises, and shall have full authority to act on behalf of ROWSTAR and bind ROWSTAR. The Project Manager shall be ROWSTAR's representative assigned to work with the Department throughout the term of this Agreement, and ROWSTAR may replace and reappoint its Project Manager from time to time.

b. **No Cost to the Department.** ROWSTAR shall be responsible for designing, financing, procuring all components of, constructing, installing, operating and maintaining its Commercial Telecommunications System at no cost to the Department.

c. **Permits.** All permits and licenses for construction of the Project shall be obtained by ROWSTAR (or its sublessees/licensees, agents or contractors) at ROWSTAR's sole cost and expense from all local, state, and federal entities having jurisdiction, including, but not limited to, the following, if and as applicable: Federal Communications Commission, Federal Aviation Administration, Federal Highway Administration, United States Army Corps of Engineers, and the Florida Department of Environmental Protection. The Department (at no cost to the Department) shall reasonably cooperate with ROWSTAR in connection with ROWSTAR obtaining all such permits and licenses. Further, for any such construction permits and licenses to be issued by or through the Department, the Department shall work in good faith to expedite the issuance thereof at no charge to ROWSTAR. ROWSTAR shall require all contractors and subcontractors to have all required licenses and certifications. All work performed on the Demised Premises shall conform to all applicable federal, state, and local regulations. ROWSTAR shall abide by all applicable local development and building codes and regulations and shall provide the necessary studies or data required thereby and shall comply with any applicable provisions of the National Environmental Policy Act. If requested by the Department, ROWSTAR shall provide copies of all permits and reasonable evidence of compliance with applicable local development and building codes and regulations at the time it provides the

Department with Project plans for review. ROWSTAR shall require all contractors and subcontractors performing Work under this Agreement to have all required licenses and certifications.

d. Design Requirements for Work Within the Demised Premises.

1. ROWSTAR shall employ Qualified Professional(s) to design, engineer, and oversee the construction and installation of the Commercial Telecommunications System.
2. All Engineering Drawings, final plans, as-built drawings, documents, reports, studies, surveys, and other data prepared by the Qualified Professional(s) shall be signed and sealed by such professional.
3. Upon completion of construction of each Commercial Telecommunications System, ROWSTAR shall file with the Department a duplicate set of the original drawings, tracings, plans, maps, and as-built boundary surveys, including legal descriptions of the Demised Premises, along with an as-built set of full-size prints for all structural elements of each applicable Commercial Telecommunications System. The survey work shall meet or exceed the minimum technical standards for land surveyors set forth in Florida Administrative Code, Section 61G17-6, pursuant to subsection 472.027, Florida Statutes, and shall include state plane coordinates to submeter accuracy on at least two corners of the Demised Premises and GIS requirements. In addition, the as-built plans shall include the identification of all equipment, and interconnection of major equipment components, that were installed upon the Demised Premises by or through ROWSTAR. ROWSTAR's Engineer of Record ("EOR") shall signify, by affixing an endorsement (seal/signature, as appropriate) on every sheet of the as-built set, that the work shown on the endorsed sheets was produced by or under the direction of the EOR. With the tracings and the as-built set of prints, the EOR shall submit a final set of design computations. The computations shall be bound in an 8.5" x 11" format and shall be endorsed (seal/signature, as appropriate) by the EOR. The EOR shall also submit the as-built drawings to the Department in AutoCAD files, using a format and layering system reasonably acceptable to the Department.

e. Construction/Installation Activities and Requirements.

1. The construction of the Commercial Telecommunications System shall be completed in accordance with the Plans, all permits, and the Request to Lease, subject to any field adjustments or amendments. Further, the construction of the Project as a whole shall proceed under the following terms and conditions:
 - a) Should the construction of a Commercial Telecommunications System not commence within one (1) year from the Effective

Date of this Agreement (subject to extension for Force Majeure events), the Department may unilaterally terminate this Agreement as provided below. Additionally, should ROWSTAR, after commencement of operations on the Commercial Telecommunications System, abandon the Commercial Telecommunications System for a period longer six (6) months (subject to extension for Force Majeure events), the Department may unilaterally terminate this Agreement as provided below.

- b) The Department shall have the authority to temporarily suspend construction work by ROWSTAR, wholly or in part, for such period or periods as may be necessary as a result of extreme adverse weather conditions such as flooding, catastrophic occurrences that constitute an unreasonable imposition on the public health, safety or welfare, or upon the issuance of a Governor's Declaration of a State of Emergency. Such suspensions will be in writing and give detailed reasons for the suspension and shall be for the shortest possible time period. Whenever the Department suspends work, ROWSTAR shall be granted additional days equal to the number of days of suspension. During any period of suspension, ROWSTAR shall remove construction equipment and materials from the Clear Zone, except those required for the safety of the traveling public.
- c) ROWSTAR and ROWSTAR's contractor shall perform the construction of the improvements for the Project using such means and methodology as will not, except as specifically authorized by the Department in writing, interfere with the safe and efficient operation of all State roads and other transportation facilities located on or abutting the Demised Premises.
- d) Prior to commencing construction of the Project, ROWSTAR shall provide to the Department a certification from ROWSTAR's contractor, in a form reasonably acceptable to the Department, verifying that the contractor will not, in any manner in violation of applicable laws and ordinances, use asbestos-containing building materials in the construction of the Project or lead-containing products in pipes or materials in construction of the Project.
- e) The Department shall have the right to make such inspections of the Commercial Telecommunications System as it reasonably deems necessary to make sure that all construction

is proceeding in accordance with all other terms and conditions of this Agreement, provided that (i) any such inspections shall be conducted in a manner so as to not unreasonably interfere with ROWSTAR's construction work and (ii) where reasonable under the circumstances, the Department shall provide ROWSTAR with written notice prior to any such requested inspection. In the event that the Department's inspector determines that the construction is not proceeding as required by the Plans or that the public health, safety, or welfare is being compromised by the construction in a manner in violation of applicable law, the Department shall notify ROWSTAR in writing, setting forth in reasonable detail the issue(s) identified by the inspector. The Parties shall meet within seven (7) business days after ROWSTAR's receipt of the notice in order to discuss the issue(s) and determine a mutually satisfactory resolution, failing which the Parties shall proceed pursuant to the dispute resolution procedure set forth above in this Section 7.

- f) ROWSTAR shall provide the Contract Manager no less than thirty (30) calendar days advance written notice before commencing construction and installation of the Project. Within such thirty (30) calendar day period, the Department shall remove any equipment (including but not limited to road construction and maintenance equipment) located on the Demised Premises.
- g) Significant revisions in the design or construction of the Project that deviate from the Plans or the permits must receive prior written approval from the Contract Manager.
- h) All construction of the Project shall be performed in a good and workmanlike manner at no cost or expense to the Department.
- i) The Department shall not be required to perform any construction work to prepare the Demised Premises for construction, operation, or maintenance of the Project, but the Department shall ensure that access is granted to ROWSTAR as needed for the construction, operation, or maintenance of the Project pursuant to the Plans and the Permit.
- j) Except in the case of an emergency (and then only to the extent necessary to avoid injury or death to individuals or damage to property) and except for limited access necessary for ROWSTAR's performance of its obligations hereunder or its

compliance with applicable laws that does not interfere with the Department's use or operation of such other properties in any material respect, ROWSTAR shall not enter upon any property of the Department or the State adjacent to, above or under the Demised Premises, in connection with the Project without the prior approval of the Department or the State, other than property that is open to the public. Except as otherwise authorized by the Department in writing, neither ROWSTAR nor ROWSTAR's contractor is authorized to engage in any construction activities, temporary or permanent, on the Department's property other than the Demised Premises. The Department shall grant ROWSTAR temporary access to the Department's property that is not part of the Demised Premises when necessary for construction of the Project. Such access shall be conditioned upon ROWSTAR's obligation to protect and restore any such other Department property and facilities located thereon, ROWSTAR's compliance with the Plans and permits, and such reasonable restrictions as the Department may impose to protect the safety of the traveling public.

- k) ROWSTAR shall be liable for all damage to property, real or personal, of third parties to the extent caused by ROWSTAR or ROWSTAR's contractor in the completion of the Project, except to the extent caused by the Department, its agents, or employees.
- l) ROWSTAR's storage of materials on the Demised Premises shall be confined to areas authorized by the Department in writing or as shown in the Plans. Where materials are transported to a job site, vehicles shall not be loaded beyond the loading capacity prescribed by any applicable federal, state, or local law or regulation. When it is necessary to cross curbing or sidewalks, protection against damage shall be provided by ROWSTAR, at no cost to the Department. ROWSTAR shall repair any damage to roads, curbing and sidewalks caused by ROWSTAR or ROWSTAR's contractor, at no cost to the Department. ROWSTAR shall not store any materials on the Demised Premises other than those materials required to construct and/or operate the Project. ROWSTAR shall be responsible for any such materials stored at a job site related exclusively to the Project and the Department shall not be obligated to replace any such Project-related materials lost, damaged, or destroyed at its expense, except to the extent caused by the Department, its agents, or employees and permitted by law. ROWSTAR shall be responsible for clearing from each job site all unreasonable waste materials and rubbish

generated by ROWSTAR in constructing the Project. Each job site shall at all times be kept free from an unreasonable accumulation of waste material or rubbish.

- m) ROWSTAR shall arrange its work for the Project and dispose of its materials so as not to unreasonably interfere with the operations of other contractors engaged in work adjacent to the Demised Premises being performed by the Department or its contractors and to cooperate with the Department and such other contractors in a reasonable manner.
- n) ROWSTAR shall protect all existing structures on the Department's right-of-way during construction. ROWSTAR shall maintain its work in such condition that adequate drainage will exist at all times. The construction of the Project shall not temporarily or permanently cause a material adverse effect to existing functioning storm sewers, gutters, ditches, and other run-off facilities. Any fire hydrants on or adjacent to the Department's right-of-way shall be kept accessible at all times and no material or obstruction shall be placed within fifteen (15) feet of any such fire hydrant. Heavy equipment shall not be operated close enough to pipe headwalls or other structures to cause damage or displacement.
- o) Notwithstanding any provision in this Agreement, the Road and Bridge Standards, or the Design-Build Guidelines to the contrary, without the consent of the owner of any existing utilities installed in, on, or under the Demised Premises as of the Effective Date of this Agreement pursuant to permits or other authorization issued by the Department, construction of the Project shall not interfere with such utilities and no approval of the Plans by the Department or failure of the Department to review the Plans shall relieve ROWSTAR of such responsibility.
- p) ROWSTAR shall post electromagnetic energy warning signs on or about the Demised Premises, as required by law. Additionally, ROWSTAR shall post emergency contact information on or about the Demised Premises that includes a designated person's name or position and working phone number.

- 2. ROWSTAR agrees that it will not install, nor allow to be installed by a sublessee/licensee on the Demised Premises, any electronic equipment that will interfere with any existing State of Florida communications, or with transmission on any frequencies allocated by the Federal

Communications Commission ("FCC") for non-commercial, state governmental communications. Before submitting any Request to Lease, ROWSTAR will contact the Department to determine all frequencies being used by the Department or its lessees/sublessees/licensees, or other state agencies. In the event ROWSTAR or its sublessees/licensees causes any radio frequency interference to the State's communications, ROWSTAR shall immediately remedy the situation or abandon the activity causing the interference except for short tests to confirm the elimination of the interference, which tests shall be performed only after prior written notice to the Department and only during the time period between 2:00 am and 6:00 am. Except for the installation of any type of transmission facilities on existing sites leased by the Department to third parties or other state agencies, and except for transmission on any frequencies allocated by the FCC for non-commercial, state governmental communications, the Department agrees to use its best efforts not to install or allow to be installed in the future any electronic equipment that will interfere with ROWSTAR'S or its sublessees/licensees communications equipment installed on the Demised Premises.

3. ROWSTAR and the Department agree that if a dispute should arise under this Agreement with respect to the Plans, permits, or any other issue relating to ROWSTAR's design, permitting or construction of the Commercial Telecommunications System, the ROWSTAR Project Manager and the Contract Manager shall, at the written request of either party, endeavor to resolve the issue or dispute by good faith negotiations. If the Parties are unable to resolve their dispute within ten (10) business days (the "Dispute Negotiation Period"), then ROWSTAR and the Department shall, at the written request of either party, require that the matter be reviewed by a senior level executive of each party (in the case of ROWSTAR, by a Senior Vice President or higher, and in case of the Department, by the Chief Engineer or higher). If these senior officers are unable to resolve the matter within ten (10) business days after the Dispute Negotiation Period (the "Senior Level Review Period"), then ROWSTAR and the Department shall, at the written request of either party, attempt to mediate their dispute for a period of thirty (30) calendar days following the end of the Senior Level Review Period (the "Mediation Period"), using a third party mediator who is neutral and independent of the Parties to this Agreement (the "Mediator"), such Mediator to be jointly selected by ROWSTAR and the Department within seven (7) business days after the end of the Senior Level Review Period. If the Parties cannot agree on the Mediator within such time period, then within five (5) business days thereafter, each party shall select an independent mediator, and those two mediators shall (within five (5) business days) select the Mediator. Such mediation shall be conducted in Leon County, Florida. No information exchanged in such mediation shall be discoverable or admissible in any litigation involving the Parties. Neither Party is bound by the result of the

mediation process set forth in this section, but such mediation process shall be a condition to either of the Parties filing a lawsuit or an administrative proceeding relating to a dispute with respect to the Plans, the Permit or any other issue relating to ROWSTAR's design, permitting or construction of the Project.

f. Inspection Requirements.

All steel poles installed or constructed as part of the Commercial Telecommunications System must be inspected and reported following the guidelines of the Department's Structures & Facilities Ancillary Structures Inspection Field Guide every 60 months. Concrete poles do not require inspection; however, the Department reserves the right to require inspections of concrete poles, in its sole discretion. Inspection reports shall be submitted to the Contract Manager.

g. Environmental Pollution.

Execution of this Agreement constitutes a certification by ROWSTAR that the Project will be carried out in conformance with all applicable environmental laws and regulations. ROWSTAR will be responsible for any liability in the event of ROWSTAR's non-compliance with applicable environmental laws or regulations, including the securing of any applicable permits, and for any liability that results from ROWSTAR's (or its contractor's) failure to exercise due care and take reasonable precautions with respect to any hazardous material or substance or pollution existing on the Demised Premises, taking into consideration the characteristics of such hazardous material or substance or pollution, in light of all relevant facts and circumstances, and will reimburse the Department for any loss incurred in connection therewith. If in the course of, and as a result of, construction of the Project, remediation of any hazardous material or substance or pollution existing on the Demised Premises as of the Effective Date is required by law, ROWSTAR shall timely perform, or cause to be performed, such remediation work as is required under applicable law. ROWSTAR and the Department shall share equally in the cost of such remediation; provided, however, that if the Department has actual knowledge that any such hazardous material or substance or pollution exists on the Demised Premises as of the Effective Date, and the existence thereof was not made known to ROWSTAR, in writing, prior to the Effective Date, then the Department shall be responsible to pay the entire cost of the remediation work. The provisions of this Section 6.f. shall survive the expiration or earlier termination of this Agreement. As an alternative to remediation, ROWSTAR may elect not to construct the particular Commercial Telecommunications System within the contaminated portion of the Demised Premises.

h. Utilities.

ROWSTAR acknowledges that pursuant to Florida law, ROWSTAR's use of the Demised Premises may not interfere with present or future utility needs for the Demised Premises.

1. Accordingly, in accordance with applicable law, ROWSTAR shall be responsible, at no cost or expense to the Department, for locating and identifying potential conflicts with any utilities currently located on the

Demised Premises as of the Effective Date ("Current Utilities"). In the event that any conflicts with Current Utilities are identified, ROWSTAR shall make such adjustments in ROWSTAR's use of the Demised Premises, at no cost or expense to the Department, so as to avoid the conflict and not disturb the utility without the utility's consent, with it being understood and agreed that nothing herein shall prevent ROWSTAR from negotiating, and completing, the relocation of any such Current Utilities with the owners thereof at no cost or expense to the Department.

2. For utilities to be installed on the Demised Premises pursuant to a Department permit issued after the Effective Date ("Future Utilities"), the Department shall deliver advance written notice to ROWSTAR describing, with specificity, the use and location thereof. When the Department receives a completed application for a permit to install Future Utilities, the Department's Contract Manager will provide a copy of the completed application to ROWSTAR in the manner provided for notice under this Agreement. ROWSTAR shall advise the Department's Contract Manager in writing of any potential conflicts between the identified Future Utility and the Project that would adversely affect ROWSTAR's use and operation of the Commercial Telecommunications System in any material respect and any specific written objections to the issuance of the permit within ten (10) business days of its receipt of the completed application from the Department's Contract Manager, for the Department to document appropriate conditions when issuing the permit. ROWSTAR shall at the same time provide a copy of its response to the Future Utility permit applicant. Access by or through the Department to the Demised Premises for any such Future Utilities shall be subject to the terms of Section 3.h. and Future Utilities shall be installed, permitted, designed, managed, maintained, inspected, repaired and rehabilitated (whether by the Department, the State or third parties) in compliance with the Department's rules and in accordance with conditions imposed by the Department in accordance with this Agreement to avoid an adverse material effect on ROWSTAR's use and operation of the Commercial Telecommunications System identified by ROWSTAR to the Department as provided above in this subsection 2. Notwithstanding any provision of this Agreement to the contrary, all rights of ROWSTAR pursuant to this Agreement are expressly subject to the rights of Florida Gas Transmission Company and its successors and assigns pursuant to that certain "Agreement and Global Settlement" between the Department and Florida Gas Transmission Company, LLC., dated August 21, 2013 ("Agreement and Global Settlement"), which ROWSTAR by executing this Agreement acknowledges it has received and reviewed with its legal counsel. ROWSTAR shall fully indemnify and hold the Department harmless from any claims, demands, costs, or losses the Department may incur pursuant to the Agreement and Global Settlement as a result of ROWSTAR's

construction of the Project and operation and maintenance of the Commercial Telecommunications System.

3. ROWSTAR shall be responsible, at no cost to the Department, for any property damage to any Current Utilities and Future Utilities to the extent caused by ROWSTAR's construction, operation, or maintenance activities on the Demised Premises and ROWSTAR shall hold the Department harmless pursuant to Section 14 of this Agreement to the extent that Claims of property damage to such Current Utilities and Future Utilities are made by the owners of such utilities arising directly out of any act, error, omission, or negligence of ROWSTAR or its employees, agents, contractors, or subcontractors. ROWSTAR shall also hold the Department harmless pursuant to Section 14 of this Agreement to the extent that ROWSTAR sustains any loss or inability to realize the financial benefits it anticipates from construction and operation of the Commercial Telecommunications System as a result of the exercise of any rights of Florida Gas Transmission Company and its successors and assigns pursuant to the Agreement and Global Settlement. Further, ROWSTAR shall hold the Department harmless pursuant to Section 14. to the extent of any claim against the Department by Florida Gas Transmission Company or its successors and assigns pursuant to the Agreement and Global Settlement, as a result of the activities of ROWSTAR pursuant to this Agreement.

8. MANAGEMENT, OPERATION AND MAINTENANCE OF THE COMMERCIAL TELECOMMUNICATIONS SYSTEM

a. **Management and Operation.** ROWSTAR shall be solely responsible for the management, operation, and maintenance of ROWSTAR's Commercial Telecommunications System on the Demised Premises. ROWSTAR shall have the right to subcontract for the management, operation, and maintenance of the Commercial Telecommunications System on the Demised Premises to a management company that meets or exceeds the experience of the personnel presented in ROWSTAR's proposal, which subcontract shall be subject to the Department's approval, in its sole discretion. Should the Department find that ROWSTAR's subcontractor is not performing its duties according to this Agreement or the subcontract between ROWSTAR and the management company, the Department may provide sixty (60) calendar days written notice to ROWSTAR requiring the management company's removal from its duties. If ROWSTAR's management company is removed pursuant to this section, ROWSTAR shall have sixty (60) calendar days to replace the removed management company with a management company that meets or exceeds the experience of the personnel presented in ROWSTAR's proposal. ROWSTAR shall operate the Commercial Telecommunications System constructed or installed on the Demised Premises in a safe and reliable manner, in compliance with the terms of this Agreement, and all applicable federal, state, and local governmental laws and regulations. ROWSTAR's management responsibilities include, but are not limited to the following: making diligent efforts to fulfill the wireless industry's demand for telecommunications sites by actively seeking sublessees/licensees on a competitively neutral and

nondiscriminatory basis, screening applications from sublessees/licenseses for site construction or installation, entering into agreements with sublessees/licenseses on a competitively neutral and non-discriminatory basis, charging and collecting lease payments from sublessees/licenseses and assuring that all sublessees/licenseses comply with all requirements of this Agreement, compensating the Department in accordance with Section 6. of this Agreement. In the absence of any federal or state regulations regulating the rent that may be charged by ROWSTAR and the sharing of any capital costs associated with the construction of the Commercial Telecommunications System that can be charged by ROWSTAR, then the rent will be charged at fair market value and all rent will be fair, reasonable, nondiscriminatory and consistent with current industry practices. ROWSTAR shall not reject a prospective telecommunications provider sublessee/licensee based on criteria that is anti-competitive or discriminatory.

If at any time the Department has reason to believe that ROWSTAR is not operating the Commercial Telecommunications System in accordance with the requirements of this Agreement, then the Department shall provide written notice to ROWSTAR and an opportunity to address and/or cure a failure to comply with the terms of this Agreement or any applicable federal, state, and local governmental laws and regulations within thirty (30) calendar days from its receipt of such notice. If ROWSTAR fails to cure any such failure within such thirty (30) calendar days, or fails to commence and pursue the cure of any such failure that cannot be cured within such thirty (30) calendar days, then the Department shall provide written notice to ROWSTAR as provided below for notice upon the occurrence of an Event of Default.

b. **Maintenance of Facilities.** ROWSTAR will keep and maintain the Demised Premises in good and safe condition and repair, at ROWSTAR's own expense, during the term of this Agreement and will keep the same free and clear of any and all grass, weeds, brush and debris of any kind, so as to prevent the same becoming dangerous, flammable or objectionable. The Department will have no duty to inspect or maintain any of the land, buildings or other structures in the Demised Premises during the term of this Agreement; however, the Department will have the right, upon a twenty-four (24) hour notice to ROWSTAR, to enter the property for purposes of inspection, including conducting an environmental assessment. Such assessment may include, but would not be limited to: surveying; sampling of building materials, soil, and groundwater; monitoring well installation; soil excavation; groundwater remediation; emergency asbestos abatement; operation and maintenance inspection; and, any other action that might be reasonable and necessary. The Department's right of entry will not obligate inspection of the Demised Premises by the Department, nor will it relieve ROWSTAR of its duty to maintain the Demised Premises. In the event of an emergency due to a release or suspected release of Hazardous Materials on the Demised Premises, the Department will have the right of immediate inspection and the right, but not the obligation, to engage in remedial action, without notice. ROWSTAR shall also comply with and abide by all applicable federal, state, county, municipal, and other governmental statutes, ordinances, laws and regulations affecting the maintenance of the Commercial Telecommunications System or any activity or condition on the Demised Premises. If proper maintenance has not been performed by ROWSTAR and ROWSTAR does not cure the failure within thirty (30) calendar days of the date of its receipt of notice from the Department, then the Department may perform or have others perform such maintenance and charge the reasonable and necessary cost of such maintenance to ROWSTAR. Upon notice from the Department to ROWSTAR of such charges incurred by the

Department for the performance of maintenance pursuant to this section, such charges shall become due and payable within thirty (30) calendar days.

c. **Landscaping.** The Department may require ROWSTAR to provide the Minimal Landscaping Requirements. ROWSTAR will maintain and replace as necessary any required shrubbery and keep the Demised Premises free of litter. If local codes require landscaping, the stricter code will be applicable, so long as local requirements do not conflict with highway safety issues including, but not limited to, Department-required Clear Zones.

d. **Legal Requirements.** ROWSTAR shall comply with all applicable federal, state and local laws, rules or regulations in effect now or in the future, and applicable judicial and administrative decisions having the effect of law, of any governmental authority having jurisdiction over the Demised Premises.

e. **Replacement/Modification of Commercial Telecommunications System.** ROWSTAR may from time to time during the term of this Agreement replace or upgrade all or any portion of the Commercial Telecommunications System. The procedures established by this Agreement for design and construction of the Commercial Telecommunications System, and the rights and obligations of the Parties under this Agreement, shall apply to any replacement or modification of the Commercial Telecommunications System.

9. EMINENT DOMAIN

ROWSTAR acknowledges and agrees that its relationship with the Department under this Agreement is one of lessor and lessee and no other relationship either expressed or implied shall be deemed to apply to the Parties under this Agreement. Termination of this Agreement by the Department pursuant to the terms of this Agreement for any cause expressly provided for in this Agreement shall not be deemed a taking under any eminent domain or other law so as to entitle ROWSTAR to compensation for any interest suffered or lost as a result of termination of this Agreement, including but not limited to (i) any residual interest in the Agreement, or (ii) any other facts or circumstances arising out of or in connection with this Agreement. ROWSTAR acknowledges it has no property interest associated with this Agreement under state or federal law other than a leasehold interest under this Agreement.

10. INSURANCE

a. **Description of Insurance Required.** At its own expense, ROWSTAR shall procure and maintain throughout the duration of this Agreement, the types and amounts of insurance conforming to the minimum requirements set forth below. All insurance policies required under this Agreement shall be procured from insurers that at the time coverage commences are admitted/authorized insurers to do business in the State. ROWSTAR shall not commence Work or enter upon the Demised Premises until the required insurance is in force and evidence of insurance is acceptable to the Department. Subject to the right of the Department to request, at any time, a certified copy of the policy or policies providing any such insurance, with respect to the workers' compensation insurance, general liability insurance, automobile liability insurance and professional liability insurance, an ACORD Certificate of Insurance (which verifies inclusion of the Department as an "additional insured" in the general liability coverage,

and includes thirty (30) calendar days written notice of cancellation to Department for all coverages), shall be satisfactory evidence of insurance. Such Certificates shall provide that should any policies described therein be cancelled before the expiration date thereof, notice will be delivered to the Department by the insurer in accordance with the policy provisions regarding same. Subject to the right of the Department to request, at any time, a certified copy of the policy or policies providing any such liability insurance, with respect to property insurance, an appropriate "Evidence of Property Insurance" form (ACORD Form 27) or a copy of the policy itself shall be satisfactory evidence of insurance. Until such insurance is no longer required by this Agreement, ROWSTAR shall provide the Department with renewal or replacement evidence of insurance at least thirty (30) calendar days prior to the expiration or termination of such insurance. Further, ROWSTAR agrees that the insurance coverage required hereunder shall not be modified in any material way without thirty (30) calendar days advance written notice from ROWSTAR to the Department

1. ***Workers' Compensation Insurance.*** If legally required to provide such coverage, prior to commencing physical construction of the Project within the Demised Premises, ROWSTAR shall provide evidence of worker's compensation insurance in the amount required by law and employer's liability coverage of One Million and 00/100 Dollars (\$1,000,000.00) per occurrence, covering all persons employed by ROWSTAR in connection with ROWSTAR's operations.
2. ***General Liability Insurance.*** ROWSTAR shall obtain and maintain, at its sole cost and expense, liability insurance covering the Department as an additional insured against loss or liability in connection with bodily injury, personal injury, death, or property damage or destruction occurring on or about the Demised Premises to the extent caused by ROWSTAR's construction, operation, or maintenance of the Project, under one or more policies. The liability coverage shall extend coverage to the Department for third party bodily injury, personal injury, and property damage for which ROWSTAR is liable under this Agreement. Each policy shall be written on an occurrence basis (except for any required professional liability insurance policies, which shall be written on a claims-made basis). The insurance coverage shall be in the amount of not less than Three Million and 00/100 Dollars (\$3,000,000.00) combined single limit for bodily injury, personal injury and property damage per occurrence, which may be provided by a combination of primary and excess/umbrella coverage.
3. ***Automobile Liability Insurance.*** Such insurance shall be no more restrictive than that provided by Section II (Liability Coverage) of the standard "Business Auto Policy" (ISO Form CA 00 01), including coverage for liability contractually assumed, and shall cover all owned, non-owned, and hired autos used in connection with this Agreement. The minimum limits (inclusive of any amounts provided by an umbrella or excess policy) shall be \$3,000,000 for each occurrence, Bodily Injury and Property Damage combined.

4. **Property Insurance.** Prior to commencement of any physical construction of the Project within the Demised Premises, ROWSTAR shall provide evidence of builders' risk insurance in the amount of the construction cost of the Commercial Telecommunications System. Upon completion of construction of the Project and prior to commencing operations of the Commercial Telecommunications System within the Demised Premises, ROWSTAR shall provide evidence of extended or broad form coverage property insurance covering the Commercial Telecommunications System, with coverage sufficient to cover the probable maximum loss of such Commercial Telecommunications System and alterations made by ROWSTAR pursuant to the terms hereof, which shall include coverage for damage by fire and lightning, theft, vandalism and malicious mischief, or the ISO Causes of Loss - Special Form, as well as flood insurance.

5. **Professional Liability Insurance.** Prior to commencing physical construction of the Project within the Property, ROWSTAR shall provide evidence, in a policy reasonably acceptable to the Department, of professional liability insurance in a minimum amount of Two Million Dollars (\$2,000,000.00) for any engineering, architectural, or land surveying work required in constructing the Project on the Property, procured and maintained by those third parties performing such work for or on behalf of ROWSTAR. ROWSTAR shall provide evidence of such required insurance coverage at all times during construction of the Project on the Demised Premises, with tail coverage for a minimum of three years after completion of the construction/installation of the Commercial Telecommunications System.

b. **Qualification of Insurers/Group Self-Insurers.** Insurers providing the insurance required by this Agreement must be:

1. authorized by subsisting certificates of authority issued to the companies by the Division of Insurance, State of Florida Department of Financial Services, or an eligible surplus-lines insurer under Florida Statute 626.918, or, with respect only to the workers'-compensation insurance, either authorized as a group self-insurer, pursuant to Florida Statute 440.572 that has been in continuous operation in the State of Florida for five years or more or authorized as a commercial self-insurance fund, pursuant to Florida Statute 624.462, that has been in continuous operation in the State of Florida for five years or more; and

2. in addition, such insurers, other than those authorized by Florida Statute 440.572 or Florida Statute 624.462, shall have and maintain throughout the period for which coverage is required a Best's Rating of "A-" or better and a Financial Size Category of "VII" or better according to A.M. Best Company.

c. **ROWSTAR's Insurance Primary.** The insurance provided by ROWSTAR and its contractors and subcontractors, including that provided to the Department as an additional insured, shall apply on a primary basis. Any insurance maintained by the Department shall be in excess of, and shall not contribute with, the insurance provided by ROWSTAR and its contractors or subcontractors. Except as otherwise specified, no self-insured retention is permitted.

d. **Insurance Is Additional Remedy.** Except as otherwise provided in this section, compliance with these insurance requirements shall not limit the liability of ROWSTAR or its contractors or subcontractors. Any remedy provided to the Department by the insurance provided by ROWSTAR and its contractors or subcontractors shall be in addition to and not in lieu of any other remedy (including, but not limited to, as an indemnitee of ROWSTAR) available to the Department under this Agreement or otherwise. To the extent permitted by applicable law, the Department and ROWSTAR waive all rights against each other, and against the other's consultants, contractors, subcontractors, sub-subcontractors, agents and employees, for damages covered by property insurance obtained by either in connection with the Demised Premises. The property insurance policies obtained by ROWSTAR related to the Demised Premises from and after the Effective Date shall provide such waivers of subrogation by endorsement or otherwise.

e. **No Waiver.** Neither approval nor failure to disapprove insurance furnished by ROWSTAR or its contractors or subcontractors shall relieve ROWSTAR or its contractor or subcontractor from responsibility to provide insurance as required by this Agreement.

f. **Failure to Provide Insurance Coverage.** In the event ROWSTAR shall fail to procure insurance required under this Section or fail to maintain the same in full force and effect continuously during the Term of this Agreement and any renewal thereof or fail to meet its obligations with respect to any deductible or self-insured retention amount under this Agreement, the Department shall be entitled, after thirty (30) calendar days prior written notice to ROWSTAR of ROWSTAR's default hereunder and ROWSTAR's failure to cure such default within said thirty (30) calendar days, to require ROWSTAR to immediately discontinue all construction activities related to the Project and immediately discontinue operation of the Commercial Telecommunications System until ROWSTAR has provided the Department satisfactory evidence that the required insurance has been obtained and the other obligations of ROWSTAR under this section have been met. No cessation of construction or operations required by the Department under this section shall relieve ROWSTAR or the Department of any of its other obligations under this Agreement. Nothing in this provision waives any right the Department may have to assert a breach of contract claim against ROWSTAR.

g. **Notice.** As soon as practicable after the occurrence of any accident or other event that results in or might result in injury to a person or the property of any person, and that arises in any manner from performance under this Agreement or occurs on the Demised Premises, ROWSTAR shall send timely written notice thereof to all insurers and the Department, setting forth a full and precise statement of the facts pertaining thereto.

11. REMOVAL AND RELOCATION SECURITY

ROWSTAR shall provide to the Department, prior to commencement of construction or installation of the Commercial Telecommunications System, security for removal or relocation of the Commercial Telecommunications System. The security shall be in the form of either a surety bond in the form in Exhibit "C", or irrevocable letter of credit which meets the requirements of Rule Chapter 14-116, Florida Administrative Code, and is in the form of Exhibit "D" or other form of security acceptable to the Department's Comptroller, and in an initial amount equal to the total cost for removal of the Work estimated to be undertaken during year one of this Agreement (both the surety bond and letter of credit referred to separately or together as the "Security"). ROWSTAR shall increase the initial amount to cover additional Work as it is added to the Commercial Telecommunications System; provided, however, the Parties will review the Work annually to determine the appropriate amount of the surety bond or irrevocable letter of credit. Within thirty (30) business days after receipt of evidence of an increase in the Work, ROWSTAR will direct the bank or surety to amend the Security to increase the amount of the Security by the amount of Work constructed and installed. The Department may draw down on the Security only if ROWSTAR has defaulted in its performance of the Work, removal or relocation of the Commercial Telecommunications System, such default is continuing after applicable notice and cure periods. In the event the Department draws down on the Security, ROWSTAR shall, within fifteen (15) business days of notice of intent to draw down or notice of draw down, reinstate the Security to its original amount immediately prior to the draw down.

12. PROPERTY TAXES AND ASSESSMENTS

a. **ROWSTAR and Sublessee/Licensee Property Taxes.** ROWSTAR shall pay and discharge as they become due promptly and before delinquency, all taxes, assessments, rates, charges, license fees, levies, excises or imposts (collectively, "Taxes"), whether general or special, or ordinary or extraordinary, of every name, nature and kind whatsoever, imposed as a result of ROWSTAR's use or occupancy of, or conduct of business on or from, the Demised Premises or the operation of the Commercial Telecommunications System, including, but not limited to, all governmental charges of whatsoever name, nature, or kind, which may be levied, assessed, or charged, including any ad valorem, personal property, or other potentially applicable tax imposed by virtue of the provisions of law, including, but not limited to Chapters 196 or 212, Florida Statutes, that may become a lien or charge on or against the Demised Premises, ROWSTAR's interest in the Demised Premises, or any part of the Demised Premises. This section does not preclude ROWSTAR from either (a) applying for property-tax exemptions or classifications or (b) contesting in good faith either the levy or the amount of any such taxes, assessments, or other charges.

b. **Receipts.** If requested by the Department, ROWSTAR shall obtain and deliver receipts or duplicate receipts for all property taxes, assessments, and other items required hereunder to be paid by ROWSTAR, promptly on payment thereof.

c. **ROWSTAR Acknowledgment.** ROWSTAR acknowledges and agrees that payment of all property taxes and assessments, and associated interest or penalties paid by ROWSTAR, are in addition to the compensation to be provided by ROWSTAR to the

Department under the terms of this Agreement and that there shall be no off-sets against the compensation because of payment of the aforesaid.

d. **Property Taxes Assessed Against the Department.** ROWSTAR shall be responsible for payment of and agrees to promptly pay any and all property taxes and assessments, and any interest and penalties relating thereto, imposed upon the Department because of the private, nongovernmental, commercial nature of ROWSTAR's use of the Demised Premises. Nonpayment by ROWSTAR of such taxes imposed on Department constitutes a Default. However, ROWSTAR shall be entitled to preserve ROWSTAR's rights to pursue in good faith an action against the entity imposing such property tax or assessment upon the Department to contest the levy or the amount (or both) of such taxes or assessments.

13. PROHIBITED INTERESTS

Neither ROWSTAR nor any of its contractors, subcontractors, or consultants shall enter into any contract with one another, or arrangement in connection with the Project or any property included or planned to be included in the Project, which violates any provision of Chapter 112, Florida Statutes, relating to conflicts of interest and prohibited transactions. ROWSTAR shall further diligently abide by all applicable provisions of Florida law regulating ROWSTAR with respect to procurement, contracting, and ethics, in all material respects. ROWSTAR shall insert in all contracts entered into in connection with the Project subsequent to the date hereof, and shall hereafter require its contractors and consultants to insert in each of their subcontracts the following provision:

"ROWSTAR is governed in its contracts and transactions by provisions of Florida law relating to conflicts of interest, prohibited transactions, and ethics in government. All parties to contracts with ROWSTAR relating to this project shall familiarize themselves with Chapter 112, Florida Statutes, and with general Florida law regulating ethical requirements, prohibitions, and limitations with respect to procurement and contracts."

The provisions of this Section 13. shall not be applicable to any agreement between ROWSTAR and its fiscal depositories, or to any agreement for utility services the rates for which are fixed or controlled by a governmental entity.

14. INDEMNIFICATION

a. Subject to the terms and conditions of this Section 14., ROWSTAR shall defend, indemnify, save and hold harmless the Department and all of its officers, agents and employees, from any and all third-party claims resulting in actual losses, damages, costs, claims, demands, suits, judgments, fines, penalties, and reasonable attorneys' fees (including appellate and regulatory attorney's fees) of any kind or nature, to the extent arising directly out of any act, error, omission, or negligence by or through ROWSTAR or its employees, agents, contractors, sublessees, or subcontractors, made in connection with ROWSTAR's use of the Demised Premises, or any part thereof, for ROWSTAR's construction, operation, or maintenance of the Project (a "Claim" and collectively "Claims"); provided, however, that ROWSTAR will not be liable under this subsection for any Claim to the extent arising out of any act, error, omission, or negligence by or through others, including, without limitation, the Department, or any of the

Department's officers, agents, employees, or contractors. ROWSTAR's above obligation shall be triggered by the Department's written notice and tender of a Claim for defense and indemnification to ROWSTAR that is covered by this subsection. For Claims covered by this subsection, ROWSTAR shall provide counsel reasonably acceptable to the Department and pay all reasonable attorneys' fees and other litigation costs incurred to fulfill ROWSTAR's defense and indemnification obligations under this subsection. Within thirty (30) calendar days after receiving written notice of a Claim covered by this subsection, ROWSTAR shall send written notice to the Department setting forth a statement of known facts pertaining thereto. ROWSTAR shall promptly send the Department a copy of any summons, suit, or subpoena served upon or received by ROWSTAR or any of its agents, employees, or representatives, which asserts a claim or cause of action based upon any act, error, omission, or negligence of ROWSTAR or its employees, agents, contractors, or subcontractors in connection with ROWSTAR's use of the Demised Premises, or any part thereof, for ROWSTAR's construction, operation, or maintenance of the Project. If the Department receives notice of a Claim for damages that may have arisen as a result of an act, error, omission, or negligence of ROWSTAR or its employees, agents, contractors, or subcontractors, the Department will promptly forward the Claim to ROWSTAR. The Department's failure to promptly notify ROWSTAR of a Claim will not act as or constitute a waiver of any rights of the Department under this Agreement, except to the extent that ROWSTAR is prejudiced as a result of such failure. Notwithstanding the foregoing, or anything to the contrary in this Agreement, in no event shall the requirements of this subsection be construed to provide an independent legal basis to hold ROWSTAR or the Department liable to any other person or entity for any damages, whether direct, indirect, punitive, special or consequential damages (including, but not limited to, loss of profits, interest, earnings or use) and whether arising in contract, tort or otherwise. Nothing in this subsection shall be construed as a waiver or attempted waiver by the Department of its sovereign immunity in tort under the Constitution and the laws of the State of Florida.

For the avoidance of doubt, the indemnification provided in this subsection does not include or extend to economic loss unrelated to property damage, personal injury or bodily injury, or Claims, in inverse condemnation or otherwise, brought against the Department simply by virtue of the existence of this Agreement or ROWSTAR's occupancy of the Demised Premises, or any part thereof, for the Project as permitted by, and in accordance with, the terms of this Agreement. For example purposes only, and not as a means of limitation, a claim for damages predicated on an allegation that the Department lacks sufficient legal title to a particular portion of the Demised Premises to allow it to convey a leasehold interest therein to ROWSTAR would not be covered by the indemnification provided in this subsection.

b. ROWSTAR shall also indemnify and hold harmless the Department from any other actual losses or damages of any kind or nature to the Demised Premises or any other Department owned facility or property, to the extent arising directly out of any act, error, omission, or negligence by or through ROWSTAR or its employees, agents, contractors, or subcontractors, made in connection with ROWSTAR's use of the Demised Premises, or any part thereof, for ROWSTAR's construction, operation, or maintenance of the Project; provided, however, that ROWSTAR will not be liable under this subsection 14.b. for any losses or damages to the extent arising out of any act, error, omission, or negligence by or through others, including, without limitation, the Department, or any of the Department's officers, agents, employees, or contractors.

c. This Section 14. shall remain in full force and effect in accordance with its terms and shall not be terminated by any breach (fundamental, negligent or otherwise) by any Party of its representations, warranties or covenants hereunder or by the expiration, termination, or rescission of this Agreement by any Party.

15. DEFAULT

a. **No Waiver.** No waiver by the Department of any breach of any obligations, covenants, or conditions herein contained, to be performed by ROWSTAR, shall be construed as a waiver of any succeeding breach of the same or any other covenant or condition, or shall impair consequent rights or remedies.

b. **Events of Default.** If the Department gives ROWSTAR written notice of the occurrence of any one or more of the events set-forth below and ROWSTAR fails to cure such event(s) within thirty (30) calendar days or if the event cannot be cured within such thirty (30) calendar days and ROWSTAR fails to commence the necessary curative action within such thirty (30) calendar days and fails to pursue diligently such curative action to completion, ROWSTAR shall be in "Default", which shall give rise to the Department's remedies set forth in section 16 below:

1. ROWSTAR fails to make any payment to the Department when due as provided in this Agreement if such failure shall continue for a period of thirty (30) calendar days after receipt of written notice of such failure to pay;
2. ROWSTAR fails to commence and complete construction of a specific portion of the Commercial Telecommunications System on or before the first anniversary of the Effective Date;
3. ROWSTAR abandons the Demised Premises and the abandonment lasts longer than six (6) months;
4. ROWSTAR becomes insolvent or is declared bankrupt, or files for reorganization under the bankruptcy code, or commits any act of bankruptcy or insolvency, either voluntarily or involuntarily, or allows any final judgment for money damages to stand against it unsatisfied for a period of 365 calendar days, or makes an assignment for the benefit of creditors;
5. ROWSTAR fails to maintain the Security as required in this Agreement;
6. ROWSTAR makes a material misrepresentation or omission in any warranty, representation or other statement by ROWSTAR contained in this Agreement or any financial materials or other materials submitted by ROWSTAR to the Department; or
7. Any failure to comply with the material provisions of this Agreement or failure in the performance or observance of any of the covenants or actions

required by this Agreement in any material respects beyond the cure period applicable thereto, if any (a "General Non-compliance Default"), provided, however, that ROWSTAR shall have a period of thirty (30) calendar days following receipt of written notice from the Department within which to cure a General Non-compliance Default; provided, however, that if the General Non-compliance Default reasonably requires more than thirty (30) calendar days to cure, ROWSTAR shall have an additional reasonable period to cure the General Non-compliance Default so long as ROWSTAR commences to cure within such thirty (30) calendar day period and thereafter diligently prosecutes such cure to completion.

8. Any other occurrence or failure by ROWSTAR that is identified by the provisions of this Agreement.

c. The Department will give notice in writing to ROWSTAR of all events of Default.

16. REMEDIES

If a Default occurs, and if after applicable notice and cure periods ROWSTAR has not corrected the conditions that constitute the Default or otherwise commenced and proceeded diligently with the necessary correction, the Department shall have all rights and remedies allowed by law and under any other provision of this Agreement, as well as the rights and remedies set forth below. All rights and remedies available to the Department shall be distinct, separate and cumulative.

a. By mandamus or other proceeding at law or in equity, cause ROWSTAR to remit to the Department funds sufficient to enable the Department to cure the Default.

b. By action or suit in equity, require ROWSTAR to account for all moneys owed to the Department pursuant to this Agreement.

c. By action or suit in equity, seek to enjoin any acts or things which may be unlawful.

d. By applying to a court of competent jurisdiction, seek to cause the appointment of a receiver to manage the Commercial Telecommunications System, establish and collect fees and charges, and apply the revenues to the reduction of the obligations under this Agreement.

e. By suing ROWSTAR for payment of amounts due, or becoming due, with interest on overdue payments together with all costs of collection, including attorneys' fees.

f. In the event ROWSTAR is in Default because removal or relocation of the Commercial Telecommunications System is not complete in accordance with the requirements of this Agreement, the Department may make demand under the Security required by Section 11. and complete or cause to be completed the required Work with respect to the Commercial

Telecommunications System or the removal of all Commercial Telecommunications System improvements installed on the Demised Premises.

Notwithstanding anything to the contrary contained in this Agreement, the Department shall not have the right to terminate or seek to terminate or rescind this Agreement for any Default except for a Default under Section 15.b.2. regarding ROWSTAR's failure to commence construction of a specific portion of the Commercial Telecommunications System or Section 15.b.3. regarding ROWSTAR's failure to continuously operate the Commercial Telecommunications System (each, a "Termination Event of Default"). Moreover, for a Termination Event of Default, the termination of this Agreement shall be the Department's exclusive remedy therefore. If the Department elects to terminate this Agreement for a Termination Event of Default, the Department may do so by providing ninety (90) calendar days advance written notice to ROWSTAR (subject to the rights of any Leasehold Mortgagee under this Agreement). ROWSTAR acknowledges and agrees to the Department's immediate right of re-entry of the Demised Premises upon the expiration or earlier termination of this Agreement.

Notwithstanding anything to the contrary in this Agreement, in no event shall ROWSTAR or the Department be liable to each other for any indirect, punitive, special or consequential damages (including, but not limited to, loss of profits, interest, earnings or use) whether arising in contract, tort or otherwise. The limitation of remedies provided in the preceding sentence shall survive the expiration or termination of this Agreement.

17. TERMINATION

Subject to the rights of any Leasehold Mortgagee under this Agreement, upon the termination or the expiration of this Agreement, this Agreement shall end, the obligation to pay Rent shall terminate and the Department and ROWSTAR shall have no further obligation or commitment under this Agreement, except as to obligations and commitments that are expressly stated to survive the expiration or termination of this Agreement.

18. PROHIBITION OF ENCUMBRANCES

Pursuant to applicable law, including, but not limited to, section 11.066(5), Florida Statutes, the Department's interest in the Demised Premises is not subject to a lien of any kind. Except as provided below, ROWSTAR shall not allow any mortgages, liens, or other encumbrances to attach to the Demised Premises as a result of the financing or construction of the Project, or use of the Demised Premises by ROWSTAR and ROWSTAR indemnifies and agrees to hold the Department harmless of and from any such encumbrances.

19. LEASEHOLD MORTGAGES

ROWSTAR may, at its sole cost and expense and without the consent of the Department, execute, deliver and cause or permit to be recorded against ROWSTAR's interest in the Demised Premises and ROWSTAR's Commercial Telecommunications System improvements and facilities on the Demised Premises, one or more Leasehold Mortgages (as defined in this Agreement), if at the time any such Leasehold Mortgage is executed and delivered to the Leasehold Mortgagee, no Default by ROWSTAR exists or if an existing Default by ROWSTAR

will be cured in connection with the Leasehold Mortgage, and upon and subject to the following terms and conditions:

a. A Leasehold Mortgage may not secure any debt issued by any person other than ROWSTAR or for any purpose other than the Project;

b. No Leasehold Mortgage or other instrument purporting to mortgage, pledge, encumber, or create a lien, charge or security interest on or against any or all of ROWSTAR's interest in the Demised Premises shall extend to or affect the fee simple interest in the Demised Premises, the Department's interest hereunder, or the Department's reversionary interest and estate in and to the Demised Premises or any part thereof;

c. The Department shall have no liability whatsoever for payment of the principal sum secured by any Leasehold Mortgage, or any interest accrued thereon or any other sum secured thereby or accruing thereunder, and, except for violation by the Department of the express obligations to the Leasehold Mortgagee set forth in this Agreement and for any remedies of the Leasehold Mortgagee provided by law, the Leasehold Mortgagee shall not be entitled to seek any damages or other amounts against the Department for any or all of the same;

d. The Department shall have no obligation to any Leasehold Mortgagee in the enforcement of the Department's rights and remedies herein and by law except as expressly set forth in this Agreement and unless such Leasehold Mortgagee has provided the Department with notice of its Leasehold Mortgage as provided in this Agreement;

e. Each Leasehold Mortgage shall provide that if an event of default under the Leasehold Mortgage has occurred and is continuing and the Leasehold Mortgagee gives notice of such event of default to ROWSTAR, then the Leasehold Mortgagee shall give notice of such default to the Department;

f. Subject to the terms of this Agreement and except as specified herein, all rights acquired by a Leasehold Mortgagee under any Leasehold Mortgage shall be subject and subordinate to all of the provisions of this Agreement and to all of the rights of the Department under this Agreement;

g. While any Leasehold Mortgage is outstanding, the Department shall not agree to any amendment to or modification of this Agreement or agree to a voluntary surrender or termination of this Agreement by ROWSTAR without the consent of the Leasehold Mortgagee;

h. Notwithstanding any enforcement of the security of any Leasehold Mortgage, ROWSTAR shall remain responsible to the Department for the payment of all sums owing to the Department under this Agreement and the performance and observance of all of ROWSTAR's covenants and obligations under this Agreement;

i. Except as expressly provided in this Agreement, a Leasehold Mortgagee shall not, by virtue of its Leasehold Mortgage, acquire any greater rights or interest in the Demised Premises than ROWSTAR has at any applicable time under this Agreement;

j. Each Leasehold Mortgagee, the Department, and ROWSTAR shall enter into a consent agreement in a form acceptable to all parties whereby all parties consent to the assignment of the Leasehold Mortgage to an agent in connection with the financing of the Leasehold Mortgage; provided that such consent agreement shall be in a customary form and shall include the rights and protections provided to the Leasehold Mortgagee in this Agreement. Nothing herein shall obligate the Department to consent to service of process in connection with any legal proceeding brought outside of Florida (or the commencement or prosecution of any legal proceeding brought outside of Florida) or enter into any agreement not governed by Florida law; and

k. Whenever a Leasehold Mortgage exists as to which the Department has been provided notice in accordance with the requirements of this Agreement, and until the obligations of ROWSTAR secured by such Leasehold Mortgage have been completely paid and performed and the Leasehold Mortgage has been discharged, the Department shall send to the Leasehold Mortgagee, by certified or registered mail, a true, correct and complete copy of any notice to ROWSTAR of a default by ROWSTAR under the Agreement at the same time as and whenever any such notice of default shall be given by the Department to ROWSTAR, addressed to Leasehold Mortgagee at the address last furnished to the Department by such Leasehold Mortgagee. No notice by the Department shall be deemed to have been given unless and until a copy thereof shall have been so given to and received by Leasehold Mortgagee.

ROWSTAR or any Leasehold Mortgagee shall notify the Department in writing of the execution of such Leasehold Mortgage and the name and place for service of notice upon such Leasehold Mortgagee. Upon such notification to the Department that ROWSTAR has entered, or is about to enter, into a Leasehold Mortgage, the Department hereby agrees for the benefit of such Leasehold Mortgagee, and within thirty (30) calendar days after written request by ROWSTAR, to execute and deliver to ROWSTAR and Leasehold Mortgagee an agreement, in a customary form acceptable to all parties which shall include the rights and protections provided to the Leasehold Mortgagee in this Agreement. Nothing herein shall obligate the Department to consent to service of process in connection with any legal proceeding brought outside of Florida (or the commencement or prosecution of any legal proceeding brought outside of Florida) or enter into any agreement not governed by Florida law. Notwithstanding anything in this Agreement to the contrary, if there is more than one Leasehold Mortgagee, only that Leasehold Mortgagee, to the exclusion of all other Leasehold Mortgagees, which ROWSTAR or the Leasehold Mortgage first notified the Department of the execution of a Leasehold Mortgage, shall have the rights as a Leasehold Mortgagee under this Agreement, unless such Leasehold Mortgagee has designated in writing another Leasehold Mortgagee to exercise such rights; provided, however, that a notice to the Department of a Leasehold Mortgage may name more than one Leasehold Mortgagee and the rights referred to in this Agreement may extend to all Leasehold Mortgagees named therein if such notice is submitted by a representative of all such Leasehold Mortgagees (which representative may itself be a Leasehold Mortgagee). Any references in this Agreement to the "Leasehold Mortgagee" shall be references to the Leasehold Mortgagee or representative of more than one Leasehold Mortgagee, acting on behalf of such Leasehold Mortgagees, the notice of whose Leasehold Mortgage was earliest received by the Department unless the context otherwise requires.

20. LEASEHOLD MORTGAGEE'S RIGHT TO CURE

ROWSTAR irrevocably directs that the Department accept, and the Department agrees to accept, performance and compliance by a Leasehold Mortgagee of and with any term, covenant, agreement, provision, condition or limitation on ROWSTAR's part to be kept, observed or performed under the Agreement with the same force and effect as though kept, observed or performed by ROWSTAR. Notwithstanding anything provided to the contrary in the Agreement, the Agreement shall not be terminated because of a Termination Event of Default until and unless: (i) notice of any such Termination Event of Default shall have been delivered to Leasehold Mortgagee in accordance with the provisions of this Agreement; and (ii) the Leasehold Mortgagee has not cured such default within ninety (90) calendar days following receipt of such notice or, (iii) if such default is curable but cannot be cured within such time period, the Leasehold Mortgagee has not notified the Department within such time period that it intends to cure such default, has not diligently commenced to cure such default, or does not prosecute such cure to completion within one hundred eighty (180) calendar days.

Furthermore, notwithstanding anything to the contrary contained herein, if a Leasehold Mortgagee determines to foreclose or cause its designee to foreclose the Leasehold Mortgage or to acquire or cause its designee to acquire ROWSTAR's interest in the Demised Premises or to succeed or cause its designee to succeed to ROWSTAR's possessory rights with respect to the Demised Premises or to appoint a receiver before it effectuates the cure of any ROWSTAR Default, the cure periods set forth above shall be extended by any period during which foreclosure proceedings, or legal proceedings to succeed to ROWSTAR's possessory rights, or proceedings to appoint the receiver are conducted, as the case may be. Any such proceedings shall be commenced promptly after the notice of default is delivered to Leasehold Mortgagee and shall be diligently prosecuted. Promptly after Leasehold Mortgagee or a designee of Leasehold Mortgagee acquires the Demised Premises pursuant to foreclosure proceedings or otherwise or succeeds to ROWSTAR's possessory rights or promptly after a receiver is appointed, as the case may be, Leasehold Mortgagee or its designee shall cure said Default.

21. RIGHTS OF A LEASEHOLD MORTGAGEE

The Department hereby consents to the following rights of a Leasehold Mortgagee, and agrees that a Leasehold Mortgage may contain provisions for any or all of the following:

a. An assignment of ROWSTAR's share of the net proceeds from available insurance coverage or from any award or other compensation resulting from a total or partial taking of the Demised Premises by condemnation (including a Leasehold Mortgagee's right to disburse such proceeds in accordance with the terms of the Leasehold Mortgage);

b. The entry by Leasehold Mortgagee upon the Demised Premises, upon reasonable notice to the Department and ROWSTAR to view the state of the Demised Premises;

c. A Default by ROWSTAR under this Agreement being deemed to constitute a default under the Leasehold Mortgage;

d. An assignment of ROWSTAR's right, if any, to terminate, cancel, modify, change, supplement, alter, renew, or amend the Agreement;

e. The following rights and remedies (among others) to be available to Leasehold Mortgagee upon the default under any Leasehold Mortgage:

1. The foreclosure of the Leasehold Mortgage pursuant to a power of sale, by judicial proceedings or other lawful means and the sale of ROWSTAR's interest in the Demised Premises to the purchaser at the foreclosure sale and a subsequent sale or transfer of ROWSTAR's interest in the Demised Premises by such purchaser if the purchaser is a Leasehold Mortgagee or its nominee or designee; provided however, that the right of a Leasehold Mortgagee to sell or transfer ROWSTAR's interest in the Demised Premises will be subject to:

(a) the proposed transferee (unless it is the Leasehold Mortgagee or its designee or nominee) entering into an agreement with the Department, in form and substance reasonably satisfactory to the Department, wherein the transferee acquires the rights and assumes the obligations of ROWSTAR and agrees to perform and observe all of the obligations and covenants of ROWSTAR under this Agreement;

(b) the proposed transfer, and subsequent operation of the Project, being permitted by applicable law and being permitted by the applicable rules and regulations of all entities having jurisdiction over the Project; and

(c) the Department's reasonable determination that the proposed transferee (unless it is the Leasehold Mortgagee or its designee or nominee) is capable of performing the obligations and covenants of ROWSTAR under this Agreement, which determination shall be based upon and take into account the following factors: (i) the financial strength and integrity of the proposed transferee, its direct or indirect beneficial owners, any proposed managers or operating partners and each of their respective affiliates; (ii) the experience of the proposed transferee or any operator to be engaged by the proposed transferee in operating systems similar to the Commercial Telecommunications System and performing other relevant projects; (iii) the background and reputation of the proposed transferee, its direct or indirect beneficial owners, any proposed managers or operating partners, each of their respective officers, directors and employees and each of their respective affiliates (including the absence of criminal, civil or regulatory claims or actions against or initiated by any such person and the quality of any such person's past or present performance on other projects).

2. The appointment of a receiver, irrespective of whether a Leasehold Mortgage accelerates the maturity of all indebtedness secured by the Leasehold Mortgage;
3. The right of a Leasehold Mortgagee or the receiver appointed under subsection 21.e.2. above to enter and take possession of the Demised Premises, to manage and operate the Project, to collect the income generated by the Project or the operation thereof and to cure any default under the Leasehold Mortgage or any Default by ROWSTAR under this Agreement; or
4. An assignment of ROWSTAR's right, title and interest under the Agreement and to any deposit of cash, securities or other Demised Premises which may be held to secure the performance of all obligations of ROWSTAR to the Leasehold Mortgage, including, without limitation, the covenants, conditions and agreements contained in the Leasehold Mortgage, in the premiums for or dividends upon any insurance provided for the benefit of any Leasehold Mortgagee or required by the terms of the Agreement, as well as in all refunds or rebates of taxes or assessments upon or other charges against the Demised Premises, whether paid or to be paid;

f. If the ownership of the fee and leasehold interests of the Demised Premises become vested in the same person or entity, then as long as the Leasehold Mortgage shall remain outstanding, at Leasehold Mortgagee's option, such occurrence shall not result in a merger of title. Rather, this Agreement and the Leasehold Mortgage lien thereon shall remain in full force and effect; and

g. The Leasehold Mortgage may be assigned by Leasehold Mortgagee in accordance with its terms.

h. During any period in which the Leasehold Mortgagee itself or by an agent or a receiver or a receiver and manager is the owner, or is in control or possession of, ROWSTAR's interest in the Demised Premises, it shall be bound by all liabilities and obligations of ROWSTAR accruing under this Agreement during such period. Once the Leasehold Mortgagee goes out of possession or control of ROWSTAR's interest in the Demised Premises or transfers ROWSTAR's interest in the Demised Premises to another person in accordance with the provisions of this Agreement, the Leasehold Mortgagee shall cease to be responsible for any of ROWSTAR's obligations under this Agreement accruing thereafter, and to the extent assumed by any transferee or any other person reasonably acceptable to the Department, for any of ROWSTAR's obligations under this Agreement accrued during the period in which the Leasehold Mortgagee itself or by an agent or a receiver and manager was the owner, or was in control or possession of, ROWSTAR's interest in the Demised Premises, and shall cease to be entitled to any of ROWSTAR's rights and benefits contained in this Agreement, except, if the Leasehold Mortgage remains outstanding, by way of security.

22. NEW LEASE AFTER TERMINATION

If the Agreement is terminated for any reason or is extinguished for any reason (including without limitation a rejection of this Agreement in a bankruptcy or other insolvency proceeding), the Leasehold Mortgagee may elect to demand a new lease of the Demised Premises (the "New Agreement") by written notice to the Department within thirty (30) calendar days after such termination. The Department agrees, if there are outstanding obligations of ROWSTAR to the Leasehold Mortgagee, to enter into a new lease agreement of the Demised Premises with the Leasehold Mortgagee (or its designee or nominee; provided that such designee or nominee either is controlled by the Leasehold Mortgagee or meets the requirements of Section 21.e.1.(c) for the remainder of the Term of this Agreement) upon all of the covenants, agreements, terms, provisions and limitations of this Agreement (the "New Agreement"), effective as of the date of such termination. The Department's obligation to enter into a New Agreement pursuant to the preceding sentence is subject to the following requirements, conditions, and provisions:

a. The New Agreement shall be for the remainder of the Term of the Agreement, effective on the date of termination, and shall contain the same covenants, agreements, conditions, provisions, restrictions and limitations as are then contained in the Agreement.

b. The New Agreement shall be executed by the Parties within thirty (30) calendar days after receipt by the Department of notice of Leasehold Mortgagee's or such other acquiring person's election to enter into a New Agreement.

c. Any New Agreement and the leasehold estate created thereby shall, subject to the same conditions contained in the Agreement, continue to maintain the same priority as the Agreement with regard to any Leasehold Mortgage or any other lien, charge or encumbrance affecting the Demised Premises. Concurrently with the execution and delivery of the New Agreement, the Department shall assign to the tenant named therein all of its right, title and interest in and to moneys, if any, then held by or payable to the Department which ROWSTAR would have been entitled to receive but for the termination of the Agreement.

d. If ROWSTAR refuses to surrender possession of the Demised Premises, the Department shall, at the request of Leasehold Mortgagee or such other acquiring person, institute and pursue diligently to conclusion the appropriate legal remedy or remedies to oust or remove ROWSTAR and all other occupants who are not authorized to remain in possession under this Agreement. Any such action taken by the Department at the request of Leasehold Mortgagee or such other acquiring person shall be at Leasehold Mortgagee's or such other acquiring person's sole expense.

The provisions of this Section shall survive the expiration or earlier termination of this Agreement.

23. REPRESENTATIONS

a. ROWSTAR warrants, represents and covenants that:

1. ROWSTAR is duly organized, validly existing and in good standing under the laws of the jurisdiction of its organization and is duly qualified to conduct business in the State.
2. ROWSTAR has full power and authority to enter into this Agreement and to comply with the provisions of this Agreement.
3. This Agreement has been duly authorized, executed and delivered by ROWSTAR and constitutes a valid and legally binding obligation of ROWSTAR, enforceable against ROWSTAR in accordance with the terms hereof.
4. No consent is required to be obtained by ROWSTAR from, and no notice or filing is required to be given by ROWSTAR to or made by ROWSTAR with, any person (including any governmental authority) in connection with the execution, delivery and performance by ROWSTAR of this Agreement. The foregoing does not apply to the necessary licenses, permits, and other approvals to be applied for by ROWSTAR in connection with the Project.
5. ROWSTAR currently is not the subject of bankruptcy, insolvency, or reorganization proceedings and is not in material default of, or otherwise subject to, any agreement or any law, administrative regulation, judgment, decree, note, resolution, charter or ordinance which would currently restrain or enjoin it from entering into, or complying with, this Agreement, in any material respect.
6. There is no material action, suit, proceeding, inquiry or investigation, at law or in equity, before any court or public body, pending or, to the best of ROWSTAR's knowledge, threatened, which seeks to restrain or enjoin ROWSTAR from entering into or complying with this Agreement.
7. That the execution, delivery, and performance of this Agreement will not conflict with, be inconsistent with, or result in any breach or default of any of the terms, covenants, conditions, or provisions of any indenture, bank loan, credit agreement, or other agreement or contract of any kind or nature to which ROWSTAR is a party or by which ROWSTAR may be bound.

b. The Department warrants, represents and covenants that:

1. The Department has the power and authority to enter into this Agreement and to do all acts and things and execute and deliver all other documents as are required under this Agreement to be done, observed or performed

- by it in accordance with the terms hereof. The Department has approved the execution and delivery of this Agreement and authorized the performance of its obligations hereunder.
2. This Agreement has been duly authorized, executed and delivered by the Department and constitutes a valid and legally binding obligation of the Department, enforceable against the Department in accordance with the terms hereof.
 3. No consent is required to be obtained by the Department from, and no notice or filing is required to be given by the Department to or made by the Department with, any person (including any governmental authority) in connection with the execution, delivery and performance by the Department of this Agreement.
 4. The Department has owned and maintained the Demised Premises in compliance, in all material respects, with all applicable laws and the Department is not in breach of any applicable law that would have a material adverse effect on the Demised Premises or this Agreement.
 5. There is no action, suit or proceeding, at law or in equity, or before or by any governmental authority, pending nor, to the best of the Department's knowledge, threatened against the Department which would (a) have a material adverse effect on the Demised Premises or (b) materially affect the validity or enforceability of this Agreement.
 6. There are no pending or threatened claims known to the Department arising out of hazardous substances or otherwise arising under environmental laws that could have a material adverse effect on the Demised Premises or this Agreement.
 7. To the best of the Department's knowledge, there have not been any environmental enforcement actions in the past and none are threatened or pending that could have a material adverse effect on the Demised Premises or this Agreement.
 8. The Department currently is not the subject of bankruptcy, insolvency, or reorganization proceedings and is not in material default of, or otherwise subject to, any agreement or any law, administrative regulation, judgment, decree, note, resolution, charter or ordinance which would currently restrain or enjoin it from entering into, or complying with, this Agreement, in any material respect.
 9. The execution, delivery, and performance of this Agreement will not conflict with, be inconsistent with, or result in any breach or default of any of the terms, covenants, conditions, or provisions of any indenture, bank

loan, credit agreement, or other agreement or contract of any kind or nature to which the Department is a party or by which the Department may be bound.

24. MISCELLANEOUS

a. **Payment of Tolls.** All vehicles required by ROWSTAR to service, supply, inspect or otherwise conduct its operations, including vehicles operated by employees and/or suppliers and distributors commuting to and from the Demised Premises, shall pay such tolls as are prescribed by the Department or other transportation authority.

b. **Advertising Signs.** No third-party advertising signs of any kind are permitted on the Demised Premises.

c. **Laws, Ordinances, Licenses and Permits.**

1. ROWSTAR shall comply at all times with all federal, state, and local laws and ordinances, rules and regulations concerning building design and construction/installation, safety, health, fire codes, sanitary codes, employee license requirements, and all other legal requirements that may be applied to ROWSTAR as a result of this Agreement. If any governmental entity with jurisdiction over ROWSTAR, other than the Department, renders an administrative decision or has rendered in its favor a judicial decision having the effect of law, that ROWSTAR's operations on the Demised Premises are out of compliance with its applicable laws, rules, or regulations, such noncompliance will constitute a default under this Agreement (subject to applicable notice and cure periods, and subject to ROWSTAR's right to contest and/or appeal any such decision).
2. ROWSTAR, at its sole expense, will obtain and maintain all permits and licenses necessary for the construction/installation, operation and maintenance of the Commercial Telecommunications System and to conduct its business under this Agreement, including, but not limited to, all local zoning permits, if applicable.
3. ROWSTAR agrees and warrants that in the performance of the Agreement, it will not discriminate or permit discrimination against any person or group of persons on the grounds of race, color, sex, religion, or national origin in any manner prohibited by the laws of the United States or the State of Florida.

d. **Construction Carried Out by the Department.** It is expressly understood and agreed by ROWSTAR that the Department shall have the right at any time during the term of this Agreement to make roadway improvements in and around the Demised Premises. Prior to construction of such roadway improvements, the Department will provide notice to ROWSTAR to allow for an orderly adjustment, if necessary or useful, to ROWSTAR's operations. During any such construction ROWSTAR acknowledges and agrees that there shall

be no reduction in compensation to the Department, and that the Department shall be under no obligation to ROWSTAR for any monetary losses of ROWSTAR or those of any party claiming by or through ROWSTAR associated with any work carried out by the Department or its contractors during such roadway improvements. In the event the Department requires ROWSTAR to relocate its structures or equipment, ROWSTAR shall be solely responsible for all costs associated with the removal and/or relocation of its structures or equipment and the Department shall not be responsible for any loss of revenue suffered by ROWSTAR or any of its sublessees/licensees due to removal and/or relocation of ROWSTAR's structures or equipment.

e. **Safety.** Construction/installation of ROWSTAR's Commercial Telecommunications System and operation, maintenance, and repair of the Commercial Telecommunications System shall be performed and arranged in a manner that will not interfere with the convenient, safe and continuous use, or the maintenance and improvement, of the public roadways located on or adjacent to the Demised Premises.

f. **Warranty of ROWSTAR.** ROWSTAR warrants that it has not employed or retained any company or person, other than a bona fide employee, professional, or consultant working for ROWSTAR, to solicit this Agreement and that it has not paid or agreed to pay any company or person, any fee, commission, percentage, brokerage fees, gifts or any other consideration contingent upon or resulting from the award or making of this Agreement in violation of applicable law. For breach or violation of this warranty, the Department may terminate and cancel this Agreement without incurring any liability therefore.

g. **Notices.** All notices, demands, or other writing required to be given or made or sent, or which may be given or made or sent, by either party hereto to the other, shall be deemed to have been fully given or made or sent when made in writing and either personally delivered by hand or by a nationally recognized overnight courier or deposited in the United States mail, registered or certified and postage prepaid, and addressed as follows:

To the Department: Florida Department of Transportation
Attn: Contract Manager
Office of Right of Way
605 Suwannee Street, MS 22
Tallahassee, FL 32399-0450

With a copy to: Florida Department of Transportation
Attn: Secretary
605 Suwannee Street
Tallahassee, FL 32399-0450

With a copy to: Florida Department of Transportation
Attn: General Counsel
605 Suwannee Street, MS 58
Tallahassee, FL 32399-0450

To ROWSTAR: ROWSTAR, LLC
Attn: Hillary Frank Aubin

3841 W. Kennedy Blvd., Suite #3
Tampa, FL 33609

With a copy to: Gina Grimes, Esquire
Hill Ward Henderson
3700 Bank of America Plaza
101 E. Kennedy Blvd
Tampa, FL 33602

The address to which any notice, demand or other writing may be given or made or sent to any party as provided above may be changed by written notice given by such party as above provided.

h. **Construction.** This Agreement and all rights and obligations arising thereunder shall be governed by and construed in accordance with the laws of the State of Florida.

i. **Force Majeure.** In the event that ROWSTAR's construction or operations of its Commercial Telecommunications System hereunder shall be interrupted, or prevented, by reason of Force Majeure, ROWSTAR shall be excused for that period of such delay or interruption. In the event that any of the Department's responsibilities hereunder shall be interrupted, or prevented by reason of Force Majeure, the Department shall be excused for that period of such delay or interruption.

j. **Entire Agreement.** This Agreement, with all its exhibits and amendments, together with the Plans, constitute the entire understanding of and contract between the parties with respect to the matters covered by this Agreement, and no other agreement, contract, statement or promise made by any party or to any employee, officer, or agent of any party that is not contained in this Agreement shall be binding or valid.

k. **Severance Clause.** Any portion of this Agreement declared invalid shall be severed from the remainder, which shall then be read independently of the stricken portion. The Department and ROWSTAR shall endeavor in good-faith negotiations to replace the invalid, illegal, or unenforceable provision with valid provisions the economic effect of which comes as close as possible to that of the invalid, illegal, or unenforceable provision.

l. **Venue.** The parties to this Agreement hereby understand and agree that the venue for any action that may arise as a result of this Agreement shall be in Leon County, Florida.

m. **Effect of Government Regulations.** ROWSTAR shall comply with all current or future state and federal governmental regulations relating to the construction/installation, maintenance and operation and maintenance of ROWSTAR's Commercial Telecommunications System on the Demised Premises.

n. **Amendments.** No provision of this Agreement may be amended or added to except by an agreement in writing signed by both Parties hereto.

o. **Public Records.** ROWSTAR shall comply with Chapter 119, Florida Statutes. Specifically, ROWSTAR shall:

1. Keep and maintain the public records required by the Department to perform the service.
2. Upon request from the Department's custodian of public records, provide the Department with a copy of the requested records or allow the records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided in Chapter 119, Florida Statutes, or as otherwise provided by law.
3. Ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law for the duration of the Agreement term and following completion of the Agreement if ROWSTAR does not transfer the records to the Department.
4. Upon completion of the Agreement, transfer, at no cost, to the Department, all public records in possession of ROWSTAR or keep and maintain public records required by the Department to perform the service. If ROWSTAR transfers all public records to the Department upon completion of the Agreement, ROWSTAR shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If ROWSTAR keeps and maintains public records upon completion of the Agreement, ROWSTAR shall meet all applicable requirements for retaining public records. All records stored electronically must be provided to the Department, upon request from the Department's custodian of public records, in a format that is compatible with the information technology systems of the Department.

IF ROWSTAR HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO ROWSTAR'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS AGREEMENT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT:

Central Office

850-414-5355

COprecustodian@dot.state.fl.us

Office of the General Counsel

Florida Department of Transportation

605 Suwannee Street, MS 58

Tallahassee, Florida 32399-0458

If ROWSTAR fails during such times to comply with a public records request, the Department shall enforce this section in accordance with this Agreement.

ROWSTAR shall otherwise allow public access to all documents, papers, letters or other materials, made or received by ROWSTAR in connection with this Agreement and the lease of the Demised Premises, to the extent such access is required because such documents, papers, letters or other materials are subject to the provisions of s. 24(a) of the State Constitution or Chapter 119, Florida Statutes.

p. **Intellectual Property.** Neither party shall have or acquire hereunder any right whatsoever in any intellectual property right (e.g., patent, copyright, mask work, trademark, trade name, logo, trade secret, service mark, or know-how) of the other party as a result of this Agreement, and nothing in this Agreement is intended or shall be construed as a transfer, grant, license, release or waiver of any intellectual property right of either party, in any country.

q. **Section 287.133(3)(a), Florida Statutes.** Section 287.133(3)(a), Florida Statutes, requires that ROWSTAR be informed of the following provisions of section 287.133(2)(a), Florida Statutes: "A person or affiliate who has been placed on the convicted vendor list following a conviction for a public entity crime may not submit a bid on a contract to provide any goods or services to a public entity, may not submit a bid on a contract with a public entity for the construction or repair of a public building or public work, may not submit bids on leases of real property to a public entity, may not be awarded or perform work as a contractor, supplier, subcontractor, or consultant under a contract with any public entity, and may not transact business with any public entity in excess of the threshold amount provided in section 287.017, F.S., for Category Two for a period of thirty-six (36) months from the date of being placed on the convicted vendor list.

r. **Illegal Aliens.** The Department shall consider the employment knowingly by ROWSTAR of unauthorized aliens a violation of section 274(e) of the Immigration and Nationalization Act. Such violation shall be cause for unilateral cancellation of this Agreement.

s. **Rights of Third Parties.** This Agreement shall not create any third-party beneficiary hereunder, nor shall this Agreement authorize anyone not a party hereto to maintain a suit against the Department pursuant to the terms of this Agreement.

t. **Successors and Assigns.** This Agreement shall be binding upon the successors, assigns and legal representatives of ROWSTAR and the Department.

u. **Conflict of Law.** In any instance of conflict arising out of the interpretation of federal, state and local laws governing the construction, operation, maintenance, and management of the Demised Premises, the most stringent will govern.

v. **Document Approval.** Approval by the Department of any documents required to be submitted by ROWSTAR under the terms of this Agreement does not create any liability on the part of Department for the suitability or adequacy of such submittals.

w. **Exhibits and Submittals.** All Exhibits attached to this Agreement are made a part hereof as if fully copied herein. All submittals required to be submitted by ROWSTAR that are approved by the Department are by reference made a part of this Agreement as if fully copied herein.

x. **Adequate Opportunity to Review** ROWSTAR acknowledges that it has reviewed this Agreement, is familiar with its terms, and has adequate opportunity to review this Agreement with legal counsel of ROWSTAR's choosing. ROWSTAR has entered this Agreement freely and voluntarily. The Department acknowledges that it has reviewed this Agreement, is familiar with its terms, and has adequate opportunity to review this Agreement with legal counsel of the Department's choosing. The Department has entered this Agreement freely and voluntarily.

y. **No Waiver of Sovereign Immunity.** Nothing in this Agreement or in any documents executed pursuant to the terms of this Agreement shall be construed as a waiver or attempted waiver by the Department of its sovereign immunity in tort under the Constitution and laws of the State of Florida.

z. **Counterparts.** This Agreement may be executed in two or more counterparts and duplicate originals which have been signed and delivered by each of the Parties (a party may execute a copy of this Agreement and deliver it by e-mail transmission; provided, however, that any such party shall promptly deliver an original signed copy of this Agreement).

aa. **Radon Gas.** "RADON GAS: Radon is a naturally occurring radioactive gas that, when it has accumulated in a building in sufficient quantities, may present health risks to persons who are exposed to it over time. Levels of radon that exceed federal and state guidelines have been found in buildings in Florida. Additional information regarding radon and radon testing may be obtained from your county health department."

bb. **Estoppel Certificates.** Each of the Parties shall, from time to time, upon thirty (30) calendar days written request, provide to the requesting party or any other person identified by the requesting party with an estoppel certificate stating whether the other party is in default hereunder, whether this Agreement is in full force and effect, whether this Agreement has been modified, and containing such other certifications as may be reasonably requested.

cc. **Survival.** The provisions of subsections l., o., s. and y. of this Section 24. shall survive the expiration or earlier termination of this Agreement.

The remainder of this page intentionally left blank.

IN WITNESS WHEREOF, the parties hereto have caused these presents to be executed in their respective names as of the day, month and year first above written.

ROWSTAR, LLC, a Florida limited liability company

By: Hillary Frank Aubin
Hillary Frank Aubin, Managing Member

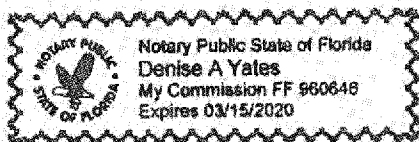
Yvonne Yates
Witness #1 Print Name: Yvonne Yates

Kelsey Thomas
Witness #2 Print Name: Kelsey Thomas

STATE OF FLORIDA
COUNTY OF Hillsborough

The foregoing instrument was acknowledged before me this 21st day of December, 2016, by Hillary Frank Aubin, Managing Member of ROWSTAR, LLC, a Florida limited liability company, on behalf of the company. She is personally known to me or has produced [Signature] as identification.

NOTARY PUBLIC



Denise A. Yates
Name: Denise A. Yates
My Commission Expires: 3/15/20
State of Florida
My Commission Expires: _____
(Seal)

STATE OF FLORIDA, DEPARTMENT OF
TRANSPORTATION

By: Brian Blanchard
Brian Blanchard
Assistant Secretary

Dianne M. Alborn
Witness #1 Print Name: Dianne Alborn

Sandra Gunn
Witness #2 Print Name: Sandra Gunn

STATE OF FLORIDA
COUNTY OF LEON

I HEREBY CERTIFY that on this day, before me, an officer duly authorized in the State of Florida aforesaid and in the County aforesaid to take acknowledgments, personally appeared Brian Blanchard, well known to me to be Assistant Secretary of the Florida Department of Transportation, who is personally known to me, and that he acknowledged executing the same on behalf of the State of Florida in the presence of two subscribing witnesses freely and voluntarily under authority duly vested in him by said State.

WITNESS my hand and official seal in the County and State last aforesaid this 29th
day of December, 2016.

Jennifer L. Parfitt
Signature of Notary



JENNIFFER L. PARFITT
MY COMMISSION # FF 005193
EXPIRES: August 4, 2017
Bonded Thru Budget Notary Services

Name of Notary _____
Commission Number: _____
My Commission Expires: _____

EXHIBIT A
To
STATE OF FLORIDA, DEPARTMENT OF TRANSPORTATION
LEASE AND OPERATING AGREEMENT

DEMISED PREMISES

Depiction and Description

The Demised Premises includes all Department owned right-of-way found in Districts 2, 3, and 6, excluding Florida's Turnpike Enterprise right-of-way upon which ROWSTAR may lease, sublease and construct, operate, and maintain the Commercial Telecommunications System. The Agreement shall be amended once per year to add and remove site specific leases, which amended description shall reflect the actual Demised Premises for each site location.

EXHIBIT B

To

STATE OF FLORIDA, DEPARTMENT OF TRANSPORTATION

LEASE AND OPERATING AGREEMENT

Description of Commercial Telecommunications System

The Commercial Telecommunications System shall be comprised of existing and/or to be constructed structures designed and/or capable of housing/accommodating the placement, collocation, construction, repair, replacement, operation and maintenance of wireless antenna, microwave dishes, radio equipment, coax and other types of related hardware, related equipment, cabinets, shelters, and other ancillary infrastructure necessary for and/or used in the transmission and/or reception of wireless voice, WiFi and data communications.

EXHIBIT C

To

STATE OF FLORIDA, DEPARTMENT OF TRANSPORTATION

LEASE AND OPERATING AGREEMENT

Form of Surety Bond

KNOW ALL MEN BY THESE PRESENTS:

That _____ (the "Contractor") has entered into a contract with the Florida Department of Transportation (the "Department") bearing the date of _____, for developing, designing, financing, operating and maintaining the Commercial Telecommunications System (the "Project") in Districts 2, 3, and 6, excluding Florida's Turnpike Enterprise right-of-way, bearing Financial Management # _____ (the "Contract"); and

That the Contractor is an entity duly authorized to do business in the State of Florida (the "State") and having its principal place of business at _____ [Street Address, City, State, Zip and Phone #] and has entered into the Contract for the construction and installation of the Project; and

That the Contractor and _____ (the "Surety"), duly authorized to do business in the State, having its principal place of business at _____ (Home Office Address) are held and firmly bound unto the Contractor, in the full and just sum of _____ lawful money of the United States of America (US\$ _____)

[Note: insert amount as required under Section _____ of the Contract], to whom payment well and truly will be made, we bind ourselves, our heirs, executors, administrators, successors and assigns, jointly and severally and firmly by these presents;

WHEREAS, it was one of the conditions of the Contract that these presents shall be executed;

NOW, THEREFORE, the conditions of this obligation are such that if, during the term of this bond, Contractor shall faithfully, promptly, efficiently and fully perform in accordance with the obligations of the Contract, and further if the Contractor shall promptly pay all State Workers' Compensation and Unemployment Compensation taxes incurred in the performance of the Contract obligations and shall be liable to the Department in a civil action instituted by the Department or any officer of the Department authorized in such cases for double any amount in money or property the Department may lose or be overcharged or otherwise defrauded of, by reason of any wrongful or criminal act, if any, of the Contractor, its agents, and employees, then this obligation shall be void; otherwise, it shall remain in full force and effect.

Should the Contractor be declared to be in default of its obligations under the Contract, the Surety shall pay the Department all costs assessed against the Contractor because of the default(s) which were not withheld from Contract proceeds, and upon the Department's demand,

the Surety shall take over performance of the Contract obligations; provided, however, that in the event the Department elects to have the Surety take over performance of the Contract obligations, the Surety may not select the Contractor or any affiliate of the Contractor to perform the Contract obligations for and on behalf of the Surety without the Department's express written consent.

The Surety shall be fully liable under this bond up to the full penal sum hereof, regardless of any modifications (of whatever amount) to the Contract amount.

This bond shall remain in full force and effect through _____, after which it shall expire.

WITNESS the signature of the Contractor and the signature of the Surety by _____ its
_____ (Agent or Attorney-in-Fact) with the seals of said Contractor and Surety
hereunto affixed this _____ day of _____.

Complete the following as appropriate

Contractor (Entity Name)*	
Authorized Signature:	_____
*Signature:	_____
Printed Name:	_____
*	_____
Title:	_____
(Seal)	_____

*Include the signature and printed name of each partner required to be affixed per partnership agreement.

Principal shall record this bond in the official records of the Clerk of Court of the county where the improvement is located prior to commencing the work.

Organized and existing under the laws of the State of _____ and authorized to do business in the State of Florida, pursuant to the laws of the State of Florida.	
Countersigned: Florida Licensed Insurance Agent Print information below (Florida Licensed Insurance Agent; whether in Attorney-in-Fact or Countersignature role): Name: _____ Business Address: _____ Telephone: _____	Surety Company Name (Print) (Seal) By: _____ Florida Licensed Insurance Agent or Attorney-in-Fact (Surety) <input type="checkbox"/> Above Signatory is also a Florida Licensed Insurance Agent (check if applicable and complete business name, address and telephone number block; if not, have such an agent countersign and complete block). NOTE: Power of Attorney showing authority of Surety's Agent or Attorney-in-Fact is to be attached.

Send "Notices to Owner" to:

EXHIBIT D

To

STATE OF FLORIDA, DEPARTMENT OF TRANSPORTATION

LEASE AND OPERATING AGREEMENT

Form of Irrevocable Letter of Credit

IRREVOCABLE STANDBY LETTER OF CREDIT

ISSUER:

PLACE FOR PRESENTATION OF DRAFT: (Name and Address of Bank/Branch --
MUST be United States address)

APPLICANT:

BENEFICIARY: STATE OF FLORIDA, DEPARTMENT OF TRANSPORTATION
OFFICE OF COMPTROLLER
MS 42B, 605 SUWANNEE STREET
TALLAHASSEE, FLORIDA 32399

LETTER OF CREDIT NUMBER:

PLACE AND DATE OF ISSUE:

AMOUNT: US\$ _____

EXPIRATION DATE:

The Issuer issues this Irrevocable Standby Letter of Credit in favor of the State of Florida, Department of Transportation, for any sum or sums up to the aggregate amount of _____ United States Dollars (US\$ _____), available by draft at sight drawn on the Issuer. Any draft under this Letter of Credit shall:

1. Identify this Irrevocable Standby Letter of Credit by the name of the Issuer, and the Letter of Credit number, amount, and place and date of issue; and
2. State one of the following:

"This drawing is due to _____ (Contractor's name) failure to perform certain obligations under the agreement _____ (include Permit #, Project # or Contract # as applicable) between _____ (Contractor's name) and the State of Florida, Department of Transportation."

or

"This drawing is being made because the Issuer of the Letter of Credit upon which draft is made has failed to maintain the financial or organization requirements established in Rule 14-116, Florida Administrative Code and the time period for providing a substitute letter of credit as required by Florida Administrative Code Chapter 14-116.002(2)(b) has expired without a substitute letter of credit meeting the requirements of Florida Administrative Code Chapter 14-116.002 having been provided."

or

"This drawing is being made because we have been notified that the Letter of Credit will not be extended beyond the current expiration date and a satisfactory replacement has not been provided as of 14 days prior to the current expiration date."

All drafts will be honored if presented to _____ (Name & United States Address on or before (Expiration Date)) or any extended expiration date.

Drawings by facsimile to facsimile number () _____ are acceptable (each such drawing, a "Fax Drawing") provided, however, that a Fax Drawing will not be effectively presented until Beneficiary confirms, by telephone, Issuer's receipt of such Fax Drawing by calling Issuer at telephone number () _____. Issuer will acknowledge Beneficiary's presentment by e-mail to the e-mail address provided to Issuer in the Fax Drawing.

This Letter of Credit shall be automatically extended for successive period of one year, without amendment, from the stated expiration date and each extended expiration date unless we send the State of Florida, Department of Transportation written notice of our intent not to extend the credit; which notice must be sent at least 30 days prior to the expiration date of the original term hereof or any extended one year term, by registered or certified mail or overnight courier, to the Comptroller of the Florida Department of Transportation at the Office of Comptroller, Mail Station 42B, 605 Suwannee Street, Tallahassee, Florida 32399, or any other address specified in writing to Issuer at the above address by the Comptroller, Florida Department of Transportation.

Notice to the State of Florida, Department of Transportation that this Letter of Credit will not be extended, shall be deemed a default.

This Letter of Credit is subject to the rules of the "International Standby Practices" ISP98. If a conflict between ISP98 and Florida law should arise, Florida law shall prevail.

Issuer:

By: _____ (Authorized signature of Issuer)

EXHIBIT E

To

STATE OF FLORIDA, DEPARTMENT OF TRANSPORTATION

LEASE AND OPERATING AGREEMENT

Anticipated Annual Lease Payment to FDOT and Projected Annual Gross Revenues

Fiscal Year (July 1 – June 30)	Anticipated Annual Lease Payment to FDOT (Based on FDOT receiving 55% of the annual gross revenue.)	Projected Annual Gross Revenue
2016-2017	\$125,400	\$228,000
2017-2018	\$558,113	\$1,014,750
2018-2019	\$1,417,456	\$2,571,930
2019-2020	\$2,636,874	\$4,794,317
2020-2021	\$4,155,458	\$7,555,378
2021-2022	\$6,007,289	\$10,922,343
2022-2023	\$8,160,731	\$14,837,693
2023-2024	\$10,588,905	\$19,252,555
2024-2025	\$13,325,981	\$24,229,058
2025-2026	\$16,410,442	\$29,837,169
2026-2027	\$21,482,223	\$39,058,588

EXHIBIT

3



EXHIBIT

4

ENROLLED

CS/CS/HB 687

2017 Legislature

1
2 An act relating to utilities; amending s. 337.401,
3 F.S.; authorizing the Department of Transportation and
4 certain local governmental entities to prescribe and
5 enforce rules or regulations regarding the placing and
6 maintaining of certain voice or data communications
7 services lines or wireless facilities on certain
8 rights-of-way; providing a short title; providing
9 definitions; prohibiting an authority from
10 prohibiting, regulating, or charging for the
11 collocation of small wireless facilities in public
12 rights-of-way under certain circumstances; authorizing
13 an authority to require a registration process and
14 permit fees under certain circumstances; requiring an
15 authority to accept, process, and issue applications
16 for permits subject to specified requirements;
17 prohibiting an authority from requiring approval or
18 requiring fees or other charges for routine
19 maintenance, the replacement of certain wireless
20 facilities, or the installation, placement,
21 maintenance, or replacement of certain micro wireless
22 facilities; providing an exception; providing
23 requirements for the collocation of small wireless
24 facilities on authority utility poles; providing
25 requirements for rates, fees, and other terms related

ENROLLED

CS/CS/HB 687

2017 Legislature

26 | to authority utility poles; authorizing an authority
27 | to apply current ordinances regulating placement of
28 | communications facilities in the right-of-way for
29 | certain applications; requiring an authority to waive
30 | certain permit application requirements and small
31 | wireless facility placement requirements; prohibiting
32 | an authority from adopting or enforcing any regulation
33 | on the placement or operation of certain
34 | communications facilities and from regulating any
35 | communications services or imposing or collecting any
36 | tax, fee, or charge not specifically authorized under
37 | state law; providing construction; requiring a
38 | wireless provider to comply with certain
39 | nondiscriminatory undergrounding requirements of an
40 | authority; authorizing the authority to waive any such
41 | requirements; authorizing a wireless infrastructure
42 | provider to apply to an authority to place utility
43 | poles in the public rights-of-way to support the
44 | collocation of small wireless facilities; providing
45 | application requirements; requiring the authority to
46 | accept and process the application subject to certain
47 | requirements; providing construction; authorizing an
48 | authority to enforce certain local codes,
49 | administrative rules, or regulations; authorizing an
50 | authority to enforce certain pending local ordinances,

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administrative rules, or regulations under certain
circumstances, subject to waiver by the authority;
providing construction; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Paragraph (a) of subsection (1) of section
337.401, Florida Statutes, is amended, and subsection (7) is
added to that section, to read:

337.401 Use of right-of-way for utilities subject to
regulation; permit; fees.—

(1)(a) The department and local governmental entities,
referred to in this section and in ss. 337.402, 337.403, and
337.404 as the "authority," that have jurisdiction and control
of public roads or publicly owned rail corridors are authorized
to prescribe and enforce reasonable rules or regulations with
reference to the placing and maintaining across, on, or within
the right-of-way limits of any road or publicly owned rail
corridors under their respective jurisdictions any electric
transmission, voice ~~telephone~~, telegraph, data, or other
communications services lines or wireless facilities; pole
lines; poles; railways; ditches; sewers; water, heat, or gas
mains; pipelines; fences; gasoline tanks and pumps; or other
structures referred to in this section and in ss. 337.402,
337.403, and 337.404 as the "utility." The department may enter

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76 into a permit-delegation agreement with a governmental entity if
77 issuance of a permit is based on requirements that the
78 department finds will ensure the safety and integrity of
79 facilities of the Department of Transportation; however, the
80 permit-delegation agreement does not apply to facilities of
81 electric utilities as defined in s. 366.02(2).

82 (7)(a) This subsection may be cited as the "Advanced
83 Wireless Infrastructure Deployment Act."

84 (b) As used in this subsection, the term:

85 1. "Antenna" means communications equipment that transmits
86 or receives electromagnetic radio frequency signals used in
87 providing wireless services.

88 2. "Applicable codes" means uniform building, fire,
89 electrical, plumbing, or mechanical codes adopted by a
90 recognized national code organization or local amendments to
91 those codes enacted solely to address threats of destruction of
92 property or injury to persons, or local codes or ordinances
93 adopted to implement this subsection. The term includes
94 objective design standards adopted by ordinance that may require
95 a new utility pole that replaces an existing utility pole to be
96 of substantially similar design, material, and color or that may
97 require reasonable spacing requirements concerning the location
98 of ground-mounted equipment. The term includes objective design
99 standards adopted by ordinance that may require a small wireless
100 facility to meet reasonable location context, color, stealth,

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101 and concealment requirements; however, such design standards may
102 be waived by the authority upon a showing that the design
103 standards are not reasonably compatible for the particular
104 location of a small wireless facility or that the design
105 standards impose an excessive expense. The waiver shall be
106 granted or denied within 45 days after the date of the request.

107 3. "Applicant" means a person who submits an application
108 and is a wireless provider.

109 4. "Application" means a request submitted by an applicant
110 to an authority for a permit to collocate small wireless
111 facilities.

112 5. "Authority" means a county or municipality having
113 jurisdiction and control of the rights-of-way of any public
114 road. The term does not include the Department of
115 Transportation. Rights-of-way under the jurisdiction and control
116 of the department are excluded from this subsection.

117 6. "Authority utility pole" means a utility pole owned by
118 an authority in the right-of-way. The term does not include a
119 utility pole owned by a municipal electric utility, a utility
120 pole used to support municipally owned or operated electric
121 distribution facilities, or a utility pole located in the right-
122 of-way within:

123 a. A retirement community that:

124 (I) Is deed restricted as housing for older persons as
125 defined in s. 760.29(4)(b);

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(II) Has more than 5,000 residents; and
(III) Has underground utilities for electric transmission
or distribution.

b. A municipality that:

(I) Is located on a coastal barrier island as defined in
s. 161.053(1)(b)3.;

(II) Has a land area of less than 5 square miles;

(III) Has less than 10,000 residents; and

(IV) Has, before July 1, 2017, received referendum
approval to issue debt to finance municipal-wide undergrounding
of its utilities for electric transmission or distribution.

7. "Collocate" or "collocation" means to install, mount,
maintain, modify, operate, or replace one or more wireless
facilities on, under, within, or adjacent to a wireless support
structure or utility pole. The term does not include the
installation of a new utility pole or wireless support structure
in the public rights-of-way.

8. "FCC" means the Federal Communications Commission.

9. "Micro wireless facility" means a small wireless
facility having dimensions no larger than 24 inches in length,
15 inches in width, and 12 inches in height and an exterior
antenna, if any, no longer than 11 inches.

10. "Small wireless facility" means a wireless facility
that meets the following qualifications:

a. Each antenna associated with the facility is located

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151 inside an enclosure of no more than 6 cubic feet in volume or,
152 in the case of antennas that have exposed elements, each antenna
153 and all of its exposed elements could fit within an enclosure of
154 no more than 6 cubic feet in volume; and

155 b. All other wireless equipment associated with the
156 facility is cumulatively no more than 28 cubic feet in volume.
157 The following types of associated ancillary equipment are not
158 included in the calculation of equipment volume: electric
159 meters, concealment elements, telecommunications demarcation
160 boxes, ground-based enclosures, grounding equipment, power
161 transfer switches, cutoff switches, vertical cable runs for the
162 connection of power and other services, and utility poles or
163 other support structures.

164 11. "Utility pole" means a pole or similar structure that
165 is used in whole or in part to provide communications services
166 or for electric distribution, lighting, traffic control,
167 signage, or a similar function. The term includes the vertical
168 support structure for traffic lights but does not include a
169 horizontal structure to which signal lights or other traffic
170 control devices are attached and does not include a pole or
171 similar structure 15 feet in height or less unless an authority
172 grants a waiver for such pole.

173 12. "Wireless facility" means equipment at a fixed
174 location which enables wireless communications between user
175 equipment and a communications network, including radio

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transceivers, antennas, wires, coaxial or fiber-optic cable or other cables, regular and backup power supplies, and comparable equipment, regardless of technological configuration, and

equipment associated with wireless communications. The term includes small wireless facilities. The term does not include:

a. The structure or improvements on, under, within, or adjacent to the structure on which the equipment is collocated;

b. Wireline backhaul facilities; or

c. Coaxial or fiber-optic cable that is between wireless structures or utility poles or that is otherwise not immediately adjacent to or directly associated with a particular antenna.

13. "Wireless infrastructure provider" means a person who has been certificated to provide telecommunications service in the state and who builds or installs wireless communication transmission equipment, wireless facilities, or wireless support structures but is not a wireless services provider.

14. "Wireless provider" means a wireless infrastructure provider or a wireless services provider.

15. "Wireless services" means any services provided using licensed or unlicensed spectrum, whether at a fixed location or mobile, using wireless facilities.

16. "Wireless services provider" means a person who provides wireless services.

17. "Wireless support structure" means a freestanding structure, such as a monopole, a guyed or self-supporting tower,

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201 or another existing or proposed structure designed to support or
202 capable of supporting wireless facilities. The term does not
203 include a utility pole.

204 (c) Except as provided in this subsection, an authority
205 may not prohibit, regulate, or charge for the collocation of
206 small wireless facilities in the public rights-of-way.

207 (d) An authority may require a registration process and
208 permit fees in accordance with subsection (3). An authority
209 shall accept applications for permits and shall process and
210 issue permits subject to the following requirements:

211 1. An authority may not directly or indirectly require an
212 applicant to perform services unrelated to the collocation for
213 which approval is sought, such as in-kind contributions to the
214 authority, including reserving fiber, conduit, or pole space for
215 the authority.

216 2. An applicant may not be required to provide more
217 information to obtain a permit than is necessary to demonstrate
218 the applicant's compliance with applicable codes for the
219 placement of small wireless facilities in the locations
220 identified the application.

221 3. An authority may not require the placement of small
222 wireless facilities on any specific utility pole or category of
223 poles or require multiple antenna systems on a single utility
224 pole.

225 4. An authority may not limit the placement of small

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226 wireless facilities by minimum separation distances. However,
227 within 14 days after the date of filing the application, an
228 authority may request that the proposed location of a small
229 wireless facility be moved to another location in the right-of-
230 way and placed on an alternative authority utility pole or
231 support structure or may place a new utility pole. The authority
232 and the applicant may negotiate the alternative location,
233 including any objective design standards and reasonable spacing
234 requirements for ground-based equipment, for 30 days after the
235 date of the request. At the conclusion of the negotiation
236 period, if the alternative location is accepted by the
237 applicant, the applicant must notify the authority of such
238 acceptance and the application shall be deemed granted for any
239 new location for which there is agreement and all other
240 locations in the application. If an agreement is not reached,
241 the applicant must notify the authority of such nonagreement and
242 the authority must grant or deny the original application within
243 90 days after the date the application was filed. A request for
244 an alternative location, an acceptance of an alternative
245 location, or a rejection of an alternative location must be in
246 writing and provided by electronic mail.

247 5. An authority shall limit the height of a small wireless
248 facility to 10 feet above the utility pole or structure upon
249 which the small wireless facility is to be collocated. Unless
250 waived by an authority, the height for a new utility pole is

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251 limited to the tallest existing utility pole as of July 1, 2017,
252 located in the same right-of-way, other than a utility pole for
253 which a waiver has previously been granted, measured from grade
254 in place within 500 feet of the proposed location of the small
255 wireless facility. If there is no utility pole within 500 feet,
256 the authority shall limit the height of the utility pole to 50
257 feet.

258 6. Except as provided in subparagraphs 4. and 5., the
259 installation of a utility pole in the public rights-of-way
260 designed to support a small wireless facility shall be subject
261 to authority rules or regulations governing the placement of
262 utility poles in the public rights-of-way and shall be subject
263 to the application review timeframes in this subsection.

264 7. Within 14 days after receiving an application, an
265 authority must determine and notify the applicant by electronic
266 mail as to whether the application is complete. If an
267 application is deemed incomplete, the authority must
268 specifically identify the missing information. An application is
269 deemed complete if the authority fails to provide notification
270 to the applicant within 14 days.

271 8. An application must be processed on a nondiscriminatory
272 basis. A complete application is deemed approved if an authority
273 fails to approve or deny the application within 60 days after
274 receipt of the application. If an authority does not use the 30-
275 day negotiation period provided in subparagraph 4., the parties

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276 may mutually agree to extend the 60-day application review
277 period. The authority shall grant or deny the application at the
278 end of the extended period. A permit issued pursuant to an
279 approved application shall remain effective for 1 year unless
280 extended by the authority.

281 9. An authority must notify the applicant of approval or
282 denial by electronic mail. An authority shall approve a complete
283 application unless it does not meet the authority's applicable
284 codes. If the application is denied, the authority must specify
285 in writing the basis for denial, including the specific code
286 provisions on which the denial was based, and send the
287 documentation to the applicant by electronic mail on the day the
288 authority denies the application. The applicant may cure the
289 deficiencies identified by the authority and resubmit the
290 application within 30 days after notice of the denial is sent to
291 the applicant. The authority shall approve or deny the revised
292 application within 30 days after receipt or the application is
293 deemed approved. Any subsequent review shall be limited to the
294 deficiencies cited in the denial.

295 10. An applicant seeking to collocate small wireless
296 facilities within the jurisdiction of a single authority may, at
297 the applicant's discretion, file a consolidated application and
298 receive a single permit for the collocation of up to 30 small
299 wireless facilities. If the application includes multiple small
300 wireless facilities, an authority may separately address small

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301 wireless facility collocations for which incomplete information
302 has been received or which are denied.

303 11. An authority may deny a proposed collocation of a
304 small wireless facility in the public rights-of-way if the
305 proposed collocation:

306 a. Materially interferes with the safe operation of
307 traffic control equipment.

308 b. Materially interferes with sight lines or clear zones
309 for transportation, pedestrians, or public safety purposes.

310 c. Materially interferes with compliance with the
311 Americans with Disabilities Act or similar federal or state
312 standards regarding pedestrian access or movement.

313 d. Materially fails to comply with the 2010 edition of the
314 Florida Department of Transportation Utility Accommodation
315 Manual.

316 e. Fails to comply with applicable codes.

317 12. An authority may adopt by ordinance provisions for
318 insurance coverage, indemnification, performance bonds, security
319 funds, force majeure, abandonment, authority liability, or
320 authority warranties. Such provisions must be reasonable and
321 nondiscriminatory.

322 13. Collocation of a small wireless facility on an
323 authority utility pole does not provide the basis for the
324 imposition of an ad valorem tax on the authority utility pole.

325 14. An authority may reserve space on authority utility

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poles for future public safety uses. However, a reservation of space may not preclude collocation of a small wireless facility. If replacement of the authority utility pole is necessary to accommodate the collocation of the small wireless facility and the future public safety use, the pole replacement is subject to make-ready provisions and the replaced pole shall accommodate the future public safety use.

15. A structure granted a permit and installed pursuant to this subsection shall comply with chapter 333 and federal regulations pertaining to airport airspace protections.

(e) An authority may not require approval or require fees or other charges for:

1. Routine maintenance;

2. Replacement of existing wireless facilities with wireless facilities that are substantially similar or of the same or smaller size; or

3. Installation, placement, maintenance, or replacement of micro wireless facilities that are suspended on cables strung between existing utility poles in compliance with applicable codes by or for a communications services provider authorized to occupy the rights-of-way and who is remitting taxes under chapter 202.

Notwithstanding this paragraph, an authority may require a right-of-way permit for work that involves excavation, closure

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351 of a sidewalk, or closure of a vehicular lane.

352 (f) Collocation of small wireless facilities on authority
353 utility poles is subject to the following requirements:

354 1. An authority may not enter into an exclusive
355 arrangement with any person for the right to attach equipment to
356 authority utility poles.

357 2. The rates and fees for collocations on authority
358 utility poles must be nondiscriminatory, regardless of the
359 services provided by the collocating person.

360 3. The rate to collocate small wireless facilities on an
361 authority utility pole may not exceed \$150 per pole annually.

362 4. Agreements between authorities and wireless providers
363 that are in effect on July 1, 2017, and that relate to the
364 collocation of small wireless facilities in the right-of-way,
365 including the collocation of small wireless facilities on
366 authority utility poles, remain in effect, subject to applicable
367 termination provisions. The wireless provider may accept the
368 rates, fees, and terms established under this subsection for
369 small wireless facilities and utility poles that are the subject
370 of an application submitted after the rates, fees, and terms
371 become effective.

372 5. A person owning or controlling an authority utility
373 pole shall offer rates, fees, and other terms that comply with
374 this subsection. By the later of January 1, 2018, or 3 months
375 after receiving a request to collocate its first small wireless

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376 facility on a utility pole owned or controlled by an authority,
377 the person owning or controlling the authority utility pole
378 shall make available, through ordinance or otherwise, rates,
379 fees, and terms for the collocation of small wireless facilities
380 on the authority utility pole which comply with this subsection.

381 a. The rates, fees, and terms must be nondiscriminatory
382 and competitively neutral and must comply with this subsection.

383 b. For an authority utility pole that supports an aerial
384 facility used to provide communications services or electric
385 service, the parties shall comply with the process for make-
386 ready work under 47 U.S.C. s. 224 and implementing regulations.
387 The good faith estimate of the person owning or controlling the
388 pole for any make-ready work necessary to enable the pole to
389 support the requested collocation must include pole replacement
390 if necessary.

391 c. For an authority utility pole that does not support an
392 aerial facility used to provide communications services or
393 electric service, the authority shall provide a good faith
394 estimate for any make-ready work necessary to enable the pole to
395 support the requested collocation, including necessary pole
396 replacement, within 60 days after receipt of a complete
397 application. Make-ready work, including any pole replacement,
398 must be completed within 60 days after written acceptance of the
399 good faith estimate by the applicant. Alternatively, an
400 authority may require the applicant seeking to collocate a small

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401 wireless facility to provide a make-ready estimate at the
402 applicant's expense for the work necessary to support the small
403 wireless facility, including pole replacement, and perform the
404 make-ready work. If pole replacement is required, the scope of
405 the make-ready estimate is limited to the design, fabrication,
406 and installation of a utility pole that is substantially similar
407 in color and composition. The authority may not condition or
408 restrict the manner in which the applicant obtains, develops, or
409 provides the estimate or conducts the make-ready work subject to
410 usual construction restoration standards for work in the right-
411 of-way. The replaced or altered utility pole shall remain the
412 property of the authority.

413 d. An authority may not require more make-ready work than
414 is required to meet applicable codes or industry standards. Fees
415 for make-ready work may not include costs related to preexisting
416 damage or prior noncompliance. Fees for make-ready work,
417 including any pole replacement, may not exceed actual costs or
418 the amount charged to communications services providers other
419 than wireless services providers for similar work and may not
420 include any consultant fee or expense.

421 (g) For any applications filed before the effective date
422 of ordinances implementing this subsection, an authority may
423 apply current ordinances relating to placement of communications
424 facilities in the right-of-way related to registration,
425 permitting, insurance coverage, indemnification, performance

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426 bonds, security funds, force majeure, abandonment, authority
427 liability, or authority warranties. Permit application
428 requirements and small wireless facility placement requirements,
429 including utility pole height limits, that conflict with this
430 subsection shall be waived by the authority.

431 (h) Except as provided in this section or specifically
432 required by state law, an authority may not adopt or enforce any
433 regulation on the placement or operation of communications
434 facilities in the rights-of-way by a provider authorized by
435 state law to operate in the rights-of-way and may not regulate
436 any communications services or impose or collect any tax, fee,
437 or charge not specifically authorized under state law. This
438 paragraph does not alter any law regarding an authority's
439 ability to regulate the relocation of facilities.

440 (i) A wireless provider shall, in relation to a small
441 wireless facility, utility pole, or wireless support structure
442 in the public rights-of-way, comply with nondiscriminatory
443 undergrounding requirements of an authority that prohibit above-
444 ground structures in public rights-of-way. Any such requirements
445 may be waived by the authority.

446 (j) A wireless infrastructure provider may apply to an
447 authority to place utility poles in the public rights-of-way to
448 support the collocation of small wireless facilities. The
449 application must include an attestation that small wireless
450 facilities will be collocated on the utility pole or structure

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451 and will be used by a wireless services provider to provide
452 service within 9 months after the date the application is
453 approved. The authority shall accept and process the application
454 in accordance with subparagraph (d)6. and any applicable codes
455 and other local codes governing the placement of utility poles
456 in the public rights-of-way.

457 (k) This subsection does not limit a local government's
458 authority to enforce historic preservation zoning regulations
459 consistent with the preservation of local zoning authority under
460 47 U.S.C. s. 332(c)(7), the requirements for facility
461 modifications under 47 U.S.C. s. 1455(a), or the National
462 Historic Preservation Act of 1966, as amended, and the
463 regulations adopted to implement such laws. An authority may
464 enforce local codes, administrative rules, or regulations
465 adopted by ordinance in effect on April 1, 2017, which are
466 applicable to a historic area designated by the state or
467 authority. An authority may enforce pending local ordinances,
468 administrative rules, or regulations applicable to a historic
469 area designated by the state if the intent to adopt such changes
470 has been publicly declared on or before April 1, 2017. An
471 authority may waive any ordinances or other requirements that
472 are subject to this paragraph.

473 (l) This subsection does not authorize a person to
474 collocate or attach wireless facilities, including any antenna,
475 micro wireless facility, or small wireless facility, on a

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476 privately owned utility pole, a utility pole owned by an
477 electric cooperative or a municipal electric utility, a
478 privately owned wireless support structure, or other private
479 property without the consent of the property owner.

480 (m) The approval of the installation, placement,
481 maintenance, or operation of a small wireless facility pursuant
482 to this subsection does not authorize the provision of any
483 voice, data, or video communications services or the
484 installation, placement, maintenance, or operation of any
485 communications facilities other than small wireless facilities
486 in the right-of-way.

487 (n) This subsection does not affect provisions relating to
488 pass-through providers in subsection (6).

489 (o) This subsection does not authorize a person to
490 collocate or attach small wireless facilities or micro wireless
491 facilities on a utility pole, unless otherwise permitted by
492 federal law, or erect a wireless support structure in the right-
493 of-way located within a retirement community that:

494 1. Is deed restricted as housing for older persons as
495 defined in s. 760.29(4)(b);

496 2. Has more than 5,000 residents; and

497 3. Has underground utilities for electric transmission or
498 distribution.

499
500 This paragraph does not apply to the installation, placement,

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501 maintenance, or replacement of micro wireless facilities on any
502 existing and duly authorized aerial communications facilities,
503 provided that once aerial facilities are converted to
504 underground facilities, any such collocation or construction
505 shall be only as provided by the municipality's underground
506 utilities ordinance.

507 (p) This subsection does not authorize a person to
508 collocate or attach small wireless facilities or micro wireless
509 facilities on a utility pole, unless otherwise permitted by
510 federal law, or erect a wireless support structure in the right-
511 of-way located within a municipality that:

512 1. Is located on a coastal barrier island as defined in s.
513 161.053(1)(b)3.;

514 2. Has a land area of less than 5 square miles;

515 3. Has fewer than 10,000 residents; and

516 4. Has, before July 1, 2017, received referendum approval
517 to issue debt to finance municipal-wide undergrounding of its
518 utilities for electric transmission or distribution.

519
520 This paragraph does not apply to the installation, placement,
521 maintenance, or replacement of micro wireless facilities on any
522 existing and duly authorized aerial communications facilities,
523 provided that once aerial facilities are converted to
524 underground facilities, any such collocation or construction
525 shall be only as provided by the municipality's underground

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526 | utilities ordinance.

527 | (q) This subsection does not authorize a person to
528 | collocate small wireless facilities or micro wireless facilities
529 | on an authority utility pole or erect a wireless support
530 | structure in a location subject to covenants, conditions,
531 | restrictions, articles of incorporation, and bylaws of a
532 | homeowners' association. This paragraph does not apply to the
533 | installation, placement, maintenance, or replacement of micro
534 | wireless facilities on any existing and duly authorized aerial
535 | communications facilities.

536 | Section 2. This act shall take effect July 1, 2017.

EXHIBIT

5

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1
2 An act relating to the Department of Transportation;
3 creating s. 316.0898, F.S.; requiring the department,
4 in consultation with the Department of Highway Safety
5 and Motor Vehicles, to develop the Florida Smart City
6 Challenge Grant Program; providing requirements for
7 grant applicants; establishing goals for the grant
8 program; requiring the Department of Transportation to
9 develop specified criteria for receipt of grants and a
10 plan for promotion of the grant program; authorizing
11 the department to contract with a third party for
12 certain purposes; requiring the department to submit
13 certain information to the Governor and Legislature;
14 providing for future repeal; amending s. 316.545,
15 F.S.; providing for assessment and calculation of a
16 fine for unlawful weight and load of a vehicle fueled
17 by natural gas; requiring written certification of
18 certain weight information; providing gross vehicle
19 weight requirements; providing an exception; amending
20 s. 335.074, F.S.; requiring inspection of certain
21 bridges at intervals required by the Federal Highway
22 Administration; amending s. 337.11, F.S.; revising the
23 amount for which the department may enter into certain
24 construction and maintenance contracts; amending s.
25 337.401, F.S.; authorizing the department and certain

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26 | local governmental entities to prescribe and enforce
27 | rules or regulations regarding the placing and
28 | maintaining of certain voice or data communications
29 | services lines or wireless facilities on certain
30 | rights-of-way; amending s. 338.227, F.S.; providing
31 | requirements for the validation of turnpike revenue
32 | bonds and related complaints; requiring the department
33 | to undertake an economic feasibility study relating to
34 | the acquisition of the Garcon Point Bridge; requiring
35 | a report to the Governor and Legislature; amending s.
36 | 339.135, F.S.; waiving requirements for approval of
37 | certain work program amendments by the Legislative
38 | Budget Commission under certain conditions; amending
39 | s. 339.2405, F.S.; deleting provisions relating to the
40 | Florida Highway Beautification Council; transferring
41 | certain powers and duties of the council to the
42 | department; amending s. 343.52, F.S.; defining the
43 | term "department"; amending s. 343.53, F.S.;
44 | conforming a cross-reference; amending s. 343.54,
45 | F.S.; prohibiting the South Florida Regional
46 | Transportation Authority from entering into certain
47 | contracts or agreements without department approval of
48 | the authority's expenditures; amending s. 343.58,
49 | F.S.; providing that certain funds provided to the
50 | authority constitute state financial assistance;

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51 requiring a written agreement for provision of such
52 funds; authorizing the department to advance a certain
53 amount of funds under certain circumstances; requiring
54 the department to submit to the Governor and
55 Legislature a review of the boundaries and
56 headquarters of department districts and a study on
57 the expenses associated with creating an additional
58 district; authorizing the Secretary of Transportation
59 to enroll the state in federal pilot programs or
60 projects for the collection and study of certain data;
61 amending s. 215.82, F.S.; conforming provisions to
62 changes made by the act; providing an effective date.

63
64 Be It Enacted by the Legislature of the State of Florida:

65
66 Section 1. Section 316.0898, Florida Statutes, is created
67 to read:

68 316.0898 Florida Smart City Challenge Grant Program.—

69 (1) The Department of Transportation, in consultation with
70 the Department of Highway Safety and Motor Vehicles, shall,
71 subject to appropriation, develop the Florida Smart City
72 Challenge Grant Program and establish grant award requirements
73 for municipalities or regions for the purpose of receiving grant
74 awards. Grant applicants must demonstrate and document the
75 adoption of emerging technologies and their impact on the

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76 transportation system and must address at least the following
77 focus areas:

78 (a) Autonomous vehicles.

79 (b) Connected vehicles.

80 (c) Sensor-based infrastructure.

81 (d) Collecting and using data.

82 (e) Electric vehicles, including charging stations.

83 (f) Developing strategic models and partnerships.

84 (2) The goals of the grant program include, but are not
85 limited to:

86 (a) Identifying transportation challenges and identifying
87 how emerging technologies can address those challenges.

88 (b) Determining the emerging technologies and strategies
89 that have the potential to provide the most significant impacts.

90 (c) Encouraging municipalities to take significant steps
91 to integrate emerging technologies into their day-to-day
92 operations.

93 (d) Identifying the barriers to implementing the grant
94 program and communicating those barriers to the Legislature and
95 appropriate agencies and organizations.

96 (e) Leveraging the initial grant to attract additional
97 public and private investments.

98 (f) Increasing the state's competitiveness in the pursuit
99 of grants from the United States Department of Transportation,
100 the United States Department of Energy, and other federal

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101 agencies.

102 (g) Committing to the continued operation of programs
103 implemented in connection with the grant.

104 (h) Serving as a model for municipalities nationwide.

105 (i) Documenting the costs and impacts of the grant program
106 and lessons learned during implementation.

107 (j) Identifying solutions that will demonstrate local or
108 regional economic impact.

109 (3) The Department of Transportation shall develop
110 eligibility, application, and selection criteria for the receipt
111 of grants and a plan for the promotion of the grant program to
112 municipalities or regions of this state as an opportunity to
113 compete for grant funding, including the award of grants to a
114 single recipient and secondary grants to specific projects of
115 merit within other applications. The Department of
116 Transportation may contract with a third party that demonstrates
117 knowledge and expertise in the focuses and goals of this section
118 to provide guidance in the development of the requirements of
119 this section.

120 (4) On or before January 1, 2018, the Department of
121 Transportation shall submit the grant program guidelines and
122 plans for promotion of the grant program to the Governor, the
123 President of the Senate, and the Speaker of the House of
124 Representatives.

125 (5) This section expires July 1, 2018.

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126 Section 2. Paragraphs (c) and (d) of subsection (3) of
127 section 316.545, Florida Statutes, are redesignated as
128 paragraphs (d) and (e), respectively, and a new paragraph (c) is
129 added to that subsection to read:

130 316.545 Weight and load unlawful; special fuel and motor
131 fuel tax enforcement; inspection; penalty; review.—

132 (3)

133 (c)1. For a vehicle fueled by natural gas, the fine is
134 calculated by reducing the actual gross vehicle weight by the
135 certified weight difference between the natural gas tank and
136 fueling system and a comparable diesel tank and fueling system.
137 Upon request by any weight inspector or law enforcement officer,
138 the vehicle operator must present written certification that
139 identifies the weight of the natural gas tank and fueling system
140 and the difference in weight of a comparable diesel tank and
141 fueling system. The written certification must originate from
142 the vehicle manufacturer or the installer of the natural gas
143 tank and fueling system.

144 2. The actual gross vehicle weight for vehicles fueled by
145 natural gas may not exceed 82,000 pounds, excluding the weight
146 allowed for idle-reduction technology under paragraph (b).

147 3. This paragraph does not apply to those vehicles
148 described in s. 316.535(6).

149 Section 3. Subsection (2) of section 335.074, Florida
150 Statutes, is amended to read:

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335.074 Safety inspection of bridges.—

(2) At regular intervals as required by the Federal Highway Administration ~~not to exceed 2 years~~, each bridge on a public transportation facility shall be inspected for structural soundness and safety for the passage of traffic on such bridge. The thoroughness with which bridges are to be inspected shall depend on such factors as age, traffic characteristics, state of maintenance, and known deficiencies. The governmental entity responsible for ~~having~~ maintenance of ~~responsibility for~~ any such bridge is ~~shall be~~ responsible for having inspections performed and reports prepared in accordance with this section ~~the provisions contained herein~~.

Section 4. Paragraph (c) of subsection (6) of section 337.11, Florida Statutes, is amended to read:

337.11 Contracting authority of department; bids; emergency repairs, supplemental agreements, and change orders; combined design and construction contracts; progress payments; records; requirements of vehicle registration.—

(6)

(c) When the department determines that it is in the best interest of the public for reasons of public concern, economy, improved operations, or safety, and only when circumstances dictate rapid completion of the work, the department may, up to the amount of \$250,000 ~~\$120,000~~, enter into contracts for construction and maintenance without advertising and receiving

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176 competitive bids. The department may enter into such contracts
177 only upon a determination that the work is necessary for one of
178 the following reasons:

179 1. To ensure timely completion of projects or avoidance of
180 undue delay for other projects;

181 2. To accomplish minor repairs or construction and
182 maintenance activities for which time is of the essence and for
183 which significant cost savings would occur; or

184 3. To accomplish nonemergency work necessary to ensure
185 avoidance of adverse conditions that affect the safe and
186 efficient flow of traffic.

187
188 The department shall make a good faith effort to obtain two or
189 more quotes, if available, from qualified contractors before
190 entering into any contract. The department shall give
191 consideration to disadvantaged business enterprise
192 participation. However, when the work exists within the limits
193 of an existing contract, the department shall make a good faith
194 effort to negotiate and enter into a contract with the prime
195 contractor on the existing contract.

196 Section 5. Paragraph (a) of subsection (1) of section
197 337.401, Florida Statutes, is amended to read:

198 337.401 Use of right-of-way for utilities subject to
199 regulation; permit; fees.—

200 (1)(a) The department and local governmental entities,

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referred to in this section and in ss. 337.402, 337.403, and 337.404 as the "authority," that have jurisdiction and control of public roads or publicly owned rail corridors are authorized to prescribe and enforce reasonable rules or regulations with reference to the placing and maintaining across, on, or within the right-of-way limits of any road or publicly owned rail corridors under their respective jurisdictions any electric transmission, ~~voice telephone~~, telegraph, data, or other communications services lines or wireless facilities; pole lines; poles; railways; ditches; sewers; water, heat, or gas mains; pipelines; fences; gasoline tanks and pumps; or other structures referred to in this section and in ss. 337.402, 337.403, and 337.404 as the "utility." The department may enter into a permit-delegation agreement with a governmental entity if issuance of a permit is based on requirements that the department finds will ensure the safety and integrity of facilities of the Department of Transportation; however, the permit-delegation agreement does not apply to facilities of electric utilities as defined in s. 366.02(2).

Section 6. Subsection (5) is added to section 338.227, Florida Statutes, to read:

338.227 Turnpike revenue bonds.—

(5) Notwithstanding s. 215.82, bonds issued pursuant to this section are not required to be validated pursuant to chapter 75 but may be validated at the option of the Division of

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Bond Finance. A complaint about such validation must be filed in the circuit court of the county in which the seat of state government is situated. The notice required to be published by s. 75.06 must be published only in the county in which the complaint is filed. The complaint and order of the circuit court must be served only on the state attorney of the circuit in which the action is pending.

Section 7. The Department of Transportation shall undertake an economic feasibility study relating to the acquisition of the Garcon Point Bridge. The department shall submit the completed study to the Governor, the President of the Senate, and the Speaker of the House of Representatives by January 1, 2018.

Section 8. Paragraph (e) of subsection (7) of section 339.135, Florida Statutes, is amended to read:

339.135 Work program; legislative budget request; definitions; preparation, adoption, execution, and amendment.—

(7) AMENDMENT OF THE ADOPTED WORK PROGRAM.—

(e) Notwithstanding paragraphs (d), ~~and~~ (g), and (h) and ss. 216.177(2) and 216.351, the secretary may request the Executive Office of the Governor to amend the adopted work program when an emergency exists, as defined in s. 252.34, and the emergency relates to the repair or rehabilitation of any state transportation facility. The Executive Office of the Governor may approve the amendment to the adopted work program

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251 and amend that portion of the department's approved budget if a
252 delay incident to the notification requirements in paragraph (d)
253 would be detrimental to the interests of the state. However, the
254 department shall immediately notify the parties specified in
255 paragraph (d) and provide such parties written justification for
256 the emergency action within 7 days after approval by the
257 Executive Office of the Governor of the amendment to the adopted
258 work program and the department's budget. The adopted work
259 program may not be amended under this subsection without
260 certification by the comptroller of the department that there
261 are sufficient funds available pursuant to the 36-month cash
262 forecast and applicable statutes.

263 Section 9. Section 339.2405, Florida Statutes, is amended
264 to read:

265 339.2405 Florida highway beautification grants Council.—

266 (1) The department shall ~~There is created within the~~
267 ~~Department of Transportation the Florida Highway Beautification~~
268 ~~Council. It shall consist of seven members appointed by the~~
269 ~~Governor. All appointed members must be residents of this state.~~
270 ~~One member must be a licensed landscape architect, one member~~
271 ~~must be a representative of the Florida Federation of Garden~~
272 ~~Clubs, Inc., one member must be a representative of the Florida~~
273 ~~Nurserymen and Growers Association, one member must be a~~
274 ~~representative of the department as designated by the head of~~
275 ~~the department, one member must be a representative of the~~

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~~Department of Agriculture and Consumer Services, and two members must be private citizens. The members of the council shall serve at the pleasure of the Governor.~~

~~(2) Each chair shall be selected by the council members and shall serve a 2-year term.~~

~~(3) The council shall meet no less than semiannually at the call of the chair or, in the chair's absence or incapacity, at the call of the head of the department. Four members shall constitute a quorum for the purpose of exercising all of the powers of the council. A vote of the majority of the members present shall be sufficient for all actions of the council.~~

~~(4) The council members shall serve without pay but shall be entitled to per diem and travel expenses pursuant to s. 112.061.~~

~~(5) A member of the council may not participate in any discussion or decision to recommend grants to any qualified local government with which the member is associated as a member of the governing body or as an employee or with which the member has entered into a contractual arrangement.~~

~~(6) The council may prescribe, amend, and repeal bylaws governing the manner in which the business of the council is conducted.~~

~~(7) (a) The duties of the council shall be to:~~

~~(a) 1.~~ Provide information to local governments and local highway beautification councils regarding the state highway

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301 beautification grants program.

302 (b)~~2.~~ Accept grant requests from local governments.

303 (c)~~3.~~ Review grant requests for compliance with department
304 ~~council~~ rules.

305 (d)~~4.~~ Establish rules for evaluating and prioritizing the
306 grant requests. The rules must include, but are not limited to,
307 an examination of each grant's aesthetic value, cost-
308 effectiveness, level of local support, feasibility of
309 installation and maintenance, and compliance with state and
310 federal regulations. Rules adopted by the department ~~council~~
311 which it uses to evaluate grant applications must take into
312 consideration the contributions made by the highway
313 beautification project in preventing litter.

314 (e)~~5.~~ Maintain a prioritized list of approved grant
315 requests. The list must include recommended funding levels for
316 each request and, if staged implementation is appropriate,
317 provide funding requirements for each stage ~~shall be provided~~.

318 ~~6. Assess the feasibility of planting and maintaining~~
319 ~~indigenous wildflowers and plants, instead of sod groundcovers,~~
320 ~~along the rights-of-way of state roads and highways. In making~~
321 ~~such assessment, the council shall utilize data from other~~
322 ~~states which include indigenous wildflower and plant species in~~
323 ~~their highway vegetative management systems.~~

324 ~~(b) The council may, at the request of the head of the~~
325 ~~department, review and make recommendations on any other highway~~

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326 ~~beautification matters relating to the State Highway System.~~

327 ~~(8) The head of the department shall provide from existing~~
328 ~~personnel such staff support services to the council as are~~
329 ~~necessary to enable the council to fulfill its duties and~~
330 ~~responsibilities.~~

331 (2) ~~(9)~~ Local highway beautification councils may be
332 created by local governmental entities or by the Legislature.
333 Before ~~Prior to~~ being submitted to the department ~~council~~, a
334 grant request must be approved by the local government or
335 governments of the area in which the project is located.

336 (3) ~~(10)~~ The head of the department, ~~after receiving~~
337 ~~recommendations from the council,~~ shall award grants to local
338 governmental entities that have submitted grant requests for
339 beautification of roads on the State Highway System and which
340 requests are on the ~~council's~~ approved list. The grants shall be
341 awarded in the order they appear on the ~~council's~~ prioritized
342 list and in accordance with available funding.

343 (4) ~~(11)~~ State highway beautification grants may be
344 requested only for projects to beautify through landscaping
345 roads on the State Highway System. The grant request shall
346 identify all costs associated with the project, including
347 sprinkler systems, plant materials, equipment, and labor. A
348 grant shall provide for the costs of purchase and installation
349 of a sprinkler system and ~~7~~ the cost of plant materials and
350 fertilizer ~~7~~ and may provide for the costs for labor associated

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with the installation of the plantings. Each local government that receives a grant shall be responsible for any costs for water, for the maintenance of the sprinkler system, for the maintenance of the landscaped areas in accordance with a maintenance agreement with the department, and, except as otherwise provided in the grant, for any costs for labor associated with the installation of the plantings. The department may provide, by contract, services to maintain such landscaping at a level not to exceed the cost of routine maintenance of an equivalent unlandscaped area.

~~(12) The council shall annually submit to the head of the Department of Transportation a proposal recommending the level of grant funding.~~

Section 10. Section 343.52, Florida Statutes, is amended to read:

343.52 Definitions.—As used in this part, the term:

(1)~~(3)~~ "Area served" means Miami-Dade, Broward, and Palm Beach Counties. However, this area may be expanded by mutual consent of the authority and the board of county commissioners of Monroe County. The authority may not expand into any additional counties without the department's prior written approval.

(2)~~(1)~~ "Authority" means the South Florida Regional Transportation Authority.

(3)~~(2)~~ "Board" means the governing body of the authority.

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(4) "Department" means the Department of Transportation.

~~(5)-(7)~~ "Feeder transit services" means a transit system that transports passengers to or from stations within or across counties.

(6) "Member" means the individuals constituting the board.

~~(7)-(5)~~ "Transit facilities" means property, avenues of access, equipment, or buildings built and installed in Miami-Dade, Broward, and Palm Beach Counties which are required to support a transit system.

~~(8)-(4)~~ "Transit system" means a system used for the transportation of people and goods by means of, without limitation, a street railway, an elevated railway having a fixed guideway, a commuter railroad, a subway, motor vehicles, or motor buses, and includes a complete system of tracks, stations, and rolling stock necessary to effectuate passenger service to or from the surrounding regional municipalities.

Section 11. Paragraph (d) of subsection (2) of section 343.53, Florida Statutes, is amended to read:

343.53 South Florida Regional Transportation Authority.—

(2) The governing board of the authority shall consist of 10 voting members, as follows:

(d) If the authority's service area is expanded pursuant to s. 343.54(6) ~~343.54(5)~~, the county containing the new service area shall have two members appointed to the board as follows:

1. The county commission of the county shall elect a

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401 commissioner as that commission's representative on the board.
402 The commissioner must be a member of the county commission when
403 elected and for the full extent of his or her term.

404 2. The Governor shall appoint a citizen member to the
405 board who is not a member of the county commission but who is a
406 resident and a qualified elector of that county.

407 Section 12. Subsections (4) and (5) of section 343.54,
408 Florida Statutes, are renumbered as subsections (5) and (6),
409 respectively, and a new subsection (4) is added to that section
410 to read:

411 343.54 Powers and duties.—

412 (4) Notwithstanding any other provision of this part, the
413 authority may not enter into, extend, or renew any contract or
414 other agreement that may be funded, in whole or in part, with
415 funds provided by the department without the prior review and
416 written approval by the department of the authority's proposed
417 expenditures.

418 Section 13. Paragraph (c) of subsection (4) of section
419 343.58, Florida Statutes, is amended to read:

420 343.58 County funding for the South Florida Regional
421 Transportation Authority.—

422 (4) Notwithstanding any other provision of law to the
423 contrary and effective July 1, 2010, until as provided in
424 paragraph (d), the department shall transfer annually from the
425 State Transportation Trust Fund to the South Florida Regional

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426 Transportation Authority the amounts specified in subparagraph
427 (a)1. or subparagraph (a)2.

428 (c)1. Funds provided to the authority by the department
429 under this subsection constitute state financial assistance
430 provided to a nonstate entity to carry out a state project
431 subject to ss. 215.97 and 215.971. The department shall provide
432 the funds in accordance with the terms of a written agreement to
433 be entered into between the authority and the department, which
434 shall provide for department review, approval, and audit of
435 authority expenditure of such funds and shall include such other
436 provisions as are required by applicable law. The department is
437 specifically authorized to agree to advance the authority 25
438 percent of the total funds provided under this subsection for a
439 state fiscal year at the beginning of each state fiscal year,
440 with monthly payments over the fiscal year on a reimbursement
441 basis as supported by invoices and such additional documentation
442 and information as the department may reasonably require and a
443 reconciliation of the advance against remaining invoices in the
444 last quarter of the fiscal year ~~may not be committed by the~~
445 ~~authority without the approval of the department, which may not~~
446 ~~be unreasonably withheld. At least 90 days before advertising~~
447 ~~any procurement or renewing any existing contract that will rely~~
448 ~~on state funds for payment, the authority shall notify the~~
449 ~~department of the proposed procurement or renewal and the~~
450 ~~proposed terms thereof. If the department, within 60 days after~~

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~~receipt of notice, objects in writing to the proposed procurement or renewal, specifying its reasons for objection, the authority may not proceed with the proposed procurement or renewal. Failure of the department to object in writing within 60 days after notice shall be deemed consent. This requirement does not impair or cause the authority to cancel contracts that exist as of June 30, 2012.~~

2. To enable the department to evaluate the authority's proposed uses of state funds, the authority shall annually provide the department with its proposed budget for the following authority fiscal year and shall promptly provide the department with any additional documentation or information required by the department for its evaluation of the proposed uses of the state funds.

Section 14. On or before October 31, 2017, the Department of Transportation shall submit to the Governor, the President of the Senate, and the Speaker of the House of Representatives a report providing a comprehensive review of the boundaries and headquarters of each of the department's districts. Along with its report, the department shall provide a study on the expenses associated with creating an additional district with the department's Fort Myers urban office as the district headquarters.

Section 15. The Secretary of Transportation may enroll the State of Florida in any federal pilot program or project for the

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collection and study of data for the review of federal or state
roadway safety, infrastructure sustainability, congestion
mitigation, transportation system efficiency, autonomous vehicle
technology, or capacity challenges.

Section 16. Subsection (2) of section 215.82, Florida
Statutes, is amended to read:

215.82 Validation; when required.—

(2) Any bonds issued pursuant to this act which are
validated shall be validated in the manner provided by chapter
75. In actions to validate bonds to be issued in the name of the
State Board of Education under s. 9(a) and (d), Art. XII of the
State Constitution and bonds to be issued pursuant to chapter
259, the Land Conservation Program, the complaint shall be filed
in the circuit court of the county where the seat of state
government is situated, the notice required to be published by
s. 75.06 shall be published only in the county where the
complaint is filed, and the complaint and order of the circuit
court shall be served only on the state attorney of the circuit
in which the action is pending. In any action to validate bonds
issued pursuant to s. 1010.62 or issued pursuant to s. 9(a)(1),
Art. XII of the State Constitution or issued pursuant to s.
215.605 ~~or s. 338.227~~, the complaint shall be filed in the
circuit court of the county where the seat of state government
is situated, the notice required to be published by s. 75.06
shall be published in a newspaper of general circulation in the

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501 county where the complaint is filed and in two other newspapers
502 of general circulation in the state, and the complaint and order
503 of the circuit court shall be served only on the state attorney
504 of the circuit in which the action is pending; provided,
505 however, that if publication of notice pursuant to this section
506 would require publication in more newspapers than would
507 publication pursuant to s. 75.06, such publication shall be made
508 pursuant to s. 75.06.

509 Section 17. This act shall take effect July 1, 2017.

EXHIBIT

6

HOUSE OF REPRESENTATIVES FINAL BILL ANALYSIS

BILL #:	CS/CS/HB 687	FINAL HOUSE FLOOR ACTION:		
SUBJECT/SHORT TITLE	Utilities	110	Y's 3	N's
SPONSOR(S):	Commerce Committee; Energy & Utilities Subcommittee; La Rosa and others	GOVERNOR'S ACTION:	Pending	
COMPANION BILLS:	CS/CS/CS/SB 596			

SUMMARY ANALYSIS

CS/CS/HB 687 passed the House on April 28, 2017, and subsequently passed the Senate on the same day. The bill creates the Advanced Wireless Infrastructure Deployment Act, which establishes a process by which wireless providers may place certain "small wireless facilities" on, under, within, or adjacent to certain utility poles or wireless support structures within public rights-of-way that are under the jurisdiction and control of an "authority" (i.e., a county or municipality). The bill provides that an authority may not prohibit, regulate, or charge for the collocation of small wireless facilities in the public rights-of-way, except as specified in the bill. The bill caps the rate for collocation on an authority utility pole at \$150 annually.

Small wireless facilities are defined in the bill as wireless facilities that meet the following size limitations:

- Each antenna associated with the facility is located inside an enclosure of no more than 6 cubic feet in volume or, if the antenna has exposed elements, the antenna and all of its exposed elements would fit within an enclosure of the same volume.
- All associated wireless equipment is cumulatively no more than 28 cubic feet in volume.

The bill provides specific terms and conditions under which an authority must process and issue permits for collocation, including the grounds on which an authority may deny an application. The bill authorizes an authority to apply certain codes that address the safety of property and persons and certain objective design standards and to request an alternate location in the right-of-way for a proposed small wireless facility. The bill exempts routine maintenance, replacement of existing wireless facilities with similarly sized wireless facilities, and placement of certain "micro wireless facilities" from approval and fees. The bill establishes specific rates and terms for the collocation of small wireless facilities on authority utility poles, including terms related to "make-ready" work to prepare or modify a utility pole to accommodate additional facilities. The bill authorizes a wireless infrastructure provider to apply for a permit to place utility poles in the public rights-of-way to support the collocation of small wireless facilities. The bill does not apply to collocation on privately owned utility poles and wireless support structures or utility poles owned by an electric cooperative or municipal electric utility. The bill also does not apply to collocation of small wireless facilities or the erection of wireless support structures in retirement communities or municipalities with specific characteristics or in locations governed by covenants and restrictions of a home owners association.

The bill does not impact state government revenues or expenditures. The bill may have an indeterminate impact on local government expenditures. The bill will have a negative impact on local government revenues if the collocation rate set forth in the bill is lower than the rates that could otherwise be established by ordinance or negotiated under local governments' existing authority.

Subject to the Governor's veto powers, the effective date of this bill is July 1, 2017.

This document does not reflect the intent or official position of the bill sponsor or House of Representatives.

STORAGE NAME: h0687z.EUS

DATE: May 1, 2017

I. SUBSTANTIVE INFORMATION

A. EFFECT OF CHANGES:

Present Situation

Use of Right-of-Way by Communications Services Providers

The Department of Transportation (DOT) and each local governmental entity that has jurisdiction and control of public roads or publicly owned rail corridors are authorized to prescribe and enforce reasonable rules or regulations with regard to the placement and maintenance of utility¹ facilities across, on, or within the right-of-way limits of any road or publicly owned rail corridors under its jurisdiction. These entities are referred to individually as the “authority”.² The authority may authorize any person who is a resident of this state, or any corporation which is organized under the laws of this state or licensed to do business within this state, to use a right-of-way for a utility in accordance with the authority’s rules or regulations.³ A utility may not be installed, located, or relocated within a right-of-way unless authorized by a written permit.⁴ The permit must require the permit holder to be responsible for any damage resulting from the permitted use of the right-of-way.⁵

Municipalities and counties must treat providers of communications services in a “nondiscriminatory and competitively neutral manner” when imposing such rules or regulations. The rules and regulations must be “generally applicable” to all such providers and may not require such providers to apply for or enter into an individual license, franchise, or other agreement as a condition of using the right-of-way.⁶

A municipality or charter county may require and collect permit fees from any providers of communications services that use or occupy municipal or county roads or rights-of-way.⁷ To ensure nondiscriminatory and competitively neutral permit fees for communications services providers, municipalities and charter counties must elect to collect permit fees for use of the right-of-way in one of two ways. First, the local government can elect to require the payment of fees from any such providers, provided that the fees are “reasonable and commensurate with the direct and actual cost of the regulatory activity,” “demonstrable,” and “equitable among users of the roads or rights-of-way.”⁸ If the local government makes this election, the rate of its local communications service tax⁹ is automatically reduced by a rate of 0.12 percent. Second, the local government can elect not to require payment of fees from any such provider and may increase its local communications service tax by a rate of up to 0.12 percent. A noncharter county may make the same election. If it chooses not to impose permit fees, it may increase its local communications service tax by a rate of up to 0.24 percent to replace the revenues it would have received for such permit fees.¹⁰

¹ Section 337.401(1)(a), F.S., refers to “any electric transmission, telephone, telegraph, or other communications services lines; pole lines; poles; railways; ditches; sewers; water, heat, or gas mains; pipelines; fences; gasoline tanks and pumps; or other structures referred to in this section and in ss. 337.402, 337.403, and 337.404 as the ‘utility.’”

² s. 337.401(1)(a), F.S.

³ s. 337.401(2), F.S.

⁴ *Id.*

⁵ *Id.*

⁶ s. 337.401(3)(a), F.S.

⁷ s. 337.401(3)(c)1.a.(I), F.S.

⁸ s. 337.401(3)(c)1.a.(I), F.S. Such costs include the costs of issuing and processing permits, plan reviews, physical inspection, and direct administrative costs.

⁹ Local communications services taxes are authorized and governed by ch. 202, F.S.

¹⁰ s. 337.401(3)(c)2., F.S.

Local Government Pole Attachment Fees

With certain exceptions, the authority of a public body¹¹ to require taxes, fees, charges, or other impositions¹² from dealers of communications services for occupying its roads and rights-of-way is specifically preempted by the state.¹³ Among the taxes, fees, and charges *not* preempted¹⁴ are the following:

- Pole attachment fees charged by a local government for attachments to its utility poles.
- Amounts charged for the rental or other use of property owned by a public body which is not in the public rights-of-way to a dealer of communications services for any purpose, including, but not limited to, the placement or attachment of equipment used in the provision of communications services.
- Permit fees related to placing or maintaining facilities in or on public roads or rights-of-way pursuant to s. 337.401, F.S.

Accordingly, local governments may establish pole attachment fees for communications services facilities by ordinance or agreement.

Collocation of Wireless Communications Facilities in DOT Rights-of-Way

With respect to property acquired for state rights-of-way, the DOT is responsible for negotiating leases that provide access for wireless communications facilities.¹⁵ Payments required under such leases must be reasonable and reflect the market rate for the use of the state government-owned property. DOT is authorized to adopt rules for granting such leases, including terms and conditions.¹⁶

The DOT has entered into three competitively bid leases that allow the lessee to place wireless facilities on the DOT's rights-of-way or to sublease those rights to a third-party for the same purpose.¹⁷ The DOT indicates that it derives an income stream from each of these agreements.¹⁸ According to the DOT, the Turnpike System including the Western Beltway, Suncoast Parkway, Veterans Expressway, I-4 connector, Polk Parkway, Sawgrass Expressway, Turnpike Mainline, Beachline Expressway, Seminole Expressway are not subject to rights-of-way leases for wireless facilities.¹⁹

Federal Law on Wireless Facilities Siting

The FCC interprets and implements certain provisions of federal law which are designed, among other purposes, to "remove barriers to deployment of wireless network facilities by hastening the review and

¹¹ A "public body" includes counties, cities, towns, villages, special tax school districts, special road and bridge districts, bridge districts, and all other districts in this state. s. 1.01(8), F.S.

¹² Section 202.24(2)(b), F.S., provides that a tax, charge, fee, or other imposition includes any amount or in-kind payment of property or services which is required by ordinance or agreement to be paid or furnished to a public body by or through a dealer of communications services in its capacity as a dealer of communications services.

¹³ s. 202.24(1), F.S.

¹⁴ See s. 202.24(2)(c), F.S.

¹⁵ s. 365.172(13)(f), F.S.

¹⁶ *Id.*

¹⁷ Florida Department of Transportation, Agency Analysis of 2017 House Bill 687, p. 3 (Jan. 30, 2017) (*DOT Analysis*). The analysis identifies the following leases: American Tower/Lodestar, entered into on March 25, 1999, with a thirty-year term; Rowstar #1, entered into on December 4, 2014, with a ten-year term, extendable for up to four additional ten year terms at the discretion of Rowstar; and Rowstar #2, entered into on December 29, 2016, with a ten-year term, extendable for up to four additional ten year terms at the discretion of Rowstar.

¹⁸ *Id.*

¹⁹ *Id.*

approval of siting applications by local land-use authorities.”²⁰ These statutory provisions preserve state and local governments’ authority to control the “placement, construction, and modification of personal wireless service facilities” and to manage “use of public rights-of-way,” but they prohibit state and local governments from using certain unreasonable criteria in making such decisions.²¹ Under the authority granted by these provisions, the FCC has issued orders to clarify the “maximum presumptively reasonable time frames for review of siting applications and the criteria local governments may apply in deciding whether to approve them.”²²

Federal law establishes that state and local governments may not establish laws, regulations, or other requirements that prohibit or have the effect of prohibiting the ability of any entity to provide personal wireless services²³ or other telecommunications services.²⁴ The FCC has interpreted these provisions as precluding state or local government actions that materially inhibit the ability of an entity to compete in a fair and balanced legal and regulatory environment. Federal circuit courts have varied on the particular standards to apply in this area.²⁵

Further, federal law provides that state and local governments may manage the public rights-of-way and may require fair and reasonable compensation from telecommunications providers for use of those rights-of-way on a nondiscriminatory basis.²⁶ The FCC has not interpreted this provision, and federal circuit courts have varied on the issue of what constitutes “fair and reasonable” compensation.²⁷

In December 2016, in response to a petition for declaratory ruling, the FCC issued a public notice seeking comment on streamlining the deployment of small cell infrastructure by improving wireless facilities siting policies.²⁸ In its notice, the FCC summarized the issues:

To satisfy consumers’ rapidly growing demand for wireless broadband and other services, wireless companies are actively expanding the network capacity needed to maintain and improve the quality of existing services and to support the introduction of new technologies and services. In particular, many wireless providers are deploying small cells and distributed antenna systems (DAS) to meet localized needs for coverage and increased capacity in outdoor and indoor environments. Although the facilities used in these networks are smaller and less obtrusive than traditional cell towers and antennas, they must be deployed more densely – i.e., in many more locations – to function effectively. As a result, local land-use authorities in many areas are facing substantial increases in the volume of siting applications for deployment of these facilities. This trend in infrastructure deployment is expected to continue, and even accelerate, as wireless providers begin rolling out 5G services.

This creates a dilemma. We recognize, as did Congress in enacting Sections 253 and 332 of the Communications Act, that localities play an important role in preserving local interests such as aesthetics and safety. At the same time, the Commission has a statutory mandate to facilitate the deployment of network facilities needed to deliver more robust wireless services to consumers throughout the United States. It is our responsibility to ensure that this deployment of network facilities does not become

²⁰ See FEDERAL COMMUNICATIONS COMMISSION, *Comments Sought on Mobilitie, LLC Petition for Declaratory Ruling and Possible Ways to Streamline Deployment Of Small Cell Infrastructure (FCC 2016 Notice)*, WT Docket No. 16-421, DA 16-1427, December 22, 2016, at p. 2; 47 U.S.C. §§253, 332(c)(7), and 1455(a).

²¹ *Id.* at p. 5, citing 47 U.S.C. §§253(c) and 332(c)(7)(A).

²² *Id.* at p. 2.

²³ Under 47 U.S.C. 332(c)(7), “personal wireless services” are defined as “commercial mobile services, unlicensed wireless services, and common carrier wireless exchange access services.”

²⁴ *FCC 2016 Notice* at p. 10, citing 47 U.S.C. §§253(a) and 332(c)(7).

²⁵ *Id.*

²⁶ *Id.* at p. 12, citing 47 U.S.C. §253(c).

²⁷ *Id.* at p. 13.

²⁸ *Id.*

subject to delay caused by unnecessarily time-consuming and costly siting review processes that may be in conflict with the Communications Act.

The stated purpose of the FCC's request for comments is to develop a factual record to assess whether and to what extent the process of local land-use authorities' review of siting applications is hindering, or is likely to hinder, the deployment of wireless infrastructure. Among the matters on which the FCC is seeking comment and guidance are questions specifically related to access to state and local government rights-of-way and the fees imposed for such access.²⁹ The FCC indicated that this "data-driven evaluation will make it possible to reach well-supported decisions on which further Commission actions, if any, would most effectively address any problem, while preserving local authorities' ability to protect interests within their purview."³⁰

Deployment of Small Wireless Facilities in Florida

Wireless service providers and wireless infrastructure providers have begun the deployment of small cell wireless infrastructure in various jurisdictions within Florida. In some instances, the providers have sited these facilities pursuant to local ordinances or have negotiated with local governments to establish rates, terms, and conditions for siting these facilities. In other instances, the providers indicate that their efforts have been hampered to varying degrees by some local governments that have imposed conditions or moratoria on the siting of small cell facilities.³¹ In general, these moratoria indicate that they are temporary measures designed to allow the local government to review their standards, regulations, and requirements related to siting of wireless communications facilities to address small cell facilities.³² In one instance, the municipality has renewed its moratoria on multiple occasions, extending its effect from the original six months to over 30 months.³³

Effect of Proposed Changes

The bill establishes a process by which wireless providers – including persons who provide wireless services³⁴ and persons who build or install wireless communication transmission equipment, facilities, and support structures – may place certain wireless facilities³⁵ on, under, within, or adjacent to certain utility poles or wireless support structures within public rights-of-way that are under the jurisdiction and control of a county or municipality (an "authority"). The bill excludes DOT and rights-of-way under its jurisdiction and control.

Under the bill, a utility pole includes any pole or similar structure that is used in whole or in part to provide communications services or for electric distribution, lighting, traffic control, signage, or a similar function, but does not include any horizontal support structures to which signal lights or other traffic control devices are attached or any pole or similar structure 15 feet in height or less. The bill excludes utility poles that are:

- Owned by a municipal electric utility or used to support electric distribution facilities owned or operated by a municipality;

²⁹ *Id.* at pp. 8-14.

³⁰ *Id.* at p. 2.

³¹ These providers state that the following 11 municipalities have adopted moratoria: Boynton Beach, Coral Springs, Fort Meade, Fort Lauderdale, Gainesville, North Lauderdale, Port Orange, Safety Harbor, Southwest Ranches Stuart, Sunrise, and Tallahassee. The providers also state that the following 6 counties have adopted moratoria: Highlands, Martin, Pasco, Pinellas, Sarasota, and St. Lucie.

³² *See, e.g.,* City of Tallahassee, Resolution No. 16-R-42, December 2016.

³³ City of Fort Lauderdale, Resolution No. 17-30, February 21, 2017.

³⁴ As defined in the bill, "wireless services" means "any services provided using licensed or unlicensed spectrum, whether at a fixed location or mobile using wireless facilities."

³⁵ As defined in the bill, "wireless facility" means "equipment at a fixed location which enables wireless communications between user equipment and a communications network, including radio transceivers, antennas, wires, coaxial or fiber optic cable or other cables, regular and backup power supplies, and comparable equipment, regardless of technological configuration, and equipment associated with wireless communications" and includes small wireless facilities.

- Located in the right-of-way within a retirement community that is deed-restricted as housing for older persons as defined in s. 760.29(4)(b), F.S., has more than 5,000 residents, and has underground utilities for electric transmission or distribution; or
- Located in the right-of-way within a municipality that is located on a coastal barrier island as defined in s. 161.053(b)(3), F.S., has a land area of less than five square miles, has less than 10,000 residents, and, prior to July 1, 2017, has received referendum approval to issue debt to finance municipal-wide undergrounding of its utilities for electric transmission or distribution.

The bill provides that an authority may not prohibit, regulate, or charge for the collocation³⁶ of small wireless facilities in the public rights-of-way, except as specified in the bill. Small wireless facilities are defined in the bill as wireless facilities that meet the following size limitations:

- Each antenna associated with the facility is located inside an enclosure of no more than 6 cubic feet in volume or, if the antenna has exposed elements, the antenna and all of its exposed elements would fit within an enclosure of the same volume.
- All other wireless equipment associated with the facility is cumulatively no more than 28 cubic feet in volume.

Certain associated ancillary equipment is not included in the calculation of these equipment volume limitations. Such equipment includes electric meters, concealment elements, telecommunications demarcation boxes, ground-based enclosures, grounding equipment, power transfer switches, cut-off switches, vertical cable runs to connect power and other services.

A small wireless facility is defined by the bill as a “micro wireless facility” if its dimensions are not larger than 24 inches in length, 15 inches in width, and 12 inches in height, with an exterior antenna, if any, no longer than 11 inches. The bill provides that the installation, placement, maintenance, or replacement of such facilities by a provider that is authorized to occupy the rights-of-way and that remits communications service taxes under ch. 202, F.S., is not subject to approval or fees imposed by an authority. The bill also exempts routine maintenance and the replacement of existing wireless facilities with wireless facilities that are substantially similar or the same size or smaller. Notwithstanding these exemptions, the bill authorizes an authority to require a right-of-way permit for work that involves excavation, closure of a sidewalk, or closure of a vehicular lane.

The bill provides that an authority may require a registration process and permit fees for collocation of small wireless facilities in accordance with s. 337.401(3), F.S. The bill provides specific terms and conditions under which the authority must process and issue permits.

Authority Review Process

The bill requires an authority to approve or deny an application for a permit to collocate small wireless facilities within 60 days of receipt of the application and to inform the applicant of the outcome through electronic mail. If the application is not processed within that time, the application is deemed approved. The applicant and the authority may mutually agree to extend this review period, unless the authority initiates a 30-day negotiation period (described in greater detail below) to request an alternative location for the proposed collocation. If the review period is extended by mutual agreement, the authority must grant or deny the application at the end of the extended period.

Within 14 days of receipt of an application, an authority must determine and notify the applicant by electronic mail as to whether the application is complete. If it determines that the application is not complete, the authority must specifically identify any missing information. An application is deemed complete if the authority fails to notify the applicant within 14 days.

³⁶ As defined in the bill, “collocate” or “collocation” means “to install, mount, maintain, modify, operate, or replace one or more wireless facilities on, under, within, or adjacent to a wireless support structure or utility pole.”

An applicant may, at its discretion, file a consolidated application and receive a single permit to collocate up to 30 small wireless facilities. If the application includes collocation of multiple small wireless facilities, the authority may separately address small wireless facility collocations for which incomplete information has been received or which are denied.

The bill provides that an authority may deny an application if the proposed collocation:

- Materially interferes with the safe operation of traffic control equipment;
- Materially interferes with sight lines or clear zones for transportation, pedestrians, or public safety purposes;
- Materially interferes with compliance with the Americans with Disabilities Act or similar law;
- Materially fails to comply with the 2010 edition of the DOT Utility Accommodation Manual; or
- Fails to comply with “applicable codes” as defined in the bill.

The bill defines “applicable codes” to include the following:

- Uniform building, fire, electrical, plumbing, or mechanical codes adopted by a recognized national code organization or local amendments to those codes enacted solely to address threats of destruction of property or injury to persons;
- Local codes or ordinances adopted to implement the provisions of the bill;³⁷
- Objective design standards adopted by ordinance that may require that a new utility pole that replaces an existing utility pole to be of substantially similar design, material, and color or that may require reasonable spacing requirements concerning the location of ground-mounted equipment; and
- Objective design standards adopted by ordinance that may require a small wireless facility to meet reasonable location context, color, stealth, and concealment requirements, provided that the authority may waive such design standards upon a showing that the design standards are not reasonably compatible for the particular location of a small wireless facility or that the design standards impose an excessive expense.³⁸

An authority may not apply any other local land development or zoning codes in its review. The bill provides that an application must be processed on a nondiscriminatory basis.

If an application is denied, the authority must specify in writing the basis for the denial, including specific code provisions, and must send this information by electronic mail to the applicant on the day the application is denied. The applicant may cure the noted deficiencies by resubmitting the application within 30 days after notice of denial. The authority must then approve or deny the revised application within 30 days or the application will be deemed approved. The authority’s review of the revised application is limited to the deficiencies cited in the notice of denial.

Limitations on Permit Conditions

The bill establishes certain limitations on the power of an authority to impose conditions on a permit to collocate small wireless facilities in the public rights-of-way. A permit issued pursuant to an approved application is effective for one year unless extended by the authority.

The bill prohibits an authority from directly or indirectly requiring an applicant to perform services unrelated to the collocation. The bill identifies such prohibited services to include in-kind contributions to the authority, including reserving fiber, conduit, or pole space for the authority. The bill also prohibits an authority from requiring an applicant to provide more information than is necessary to demonstrate

³⁷ The bill provides that an authority may adopt by ordinance reasonable and nondiscriminatory provisions for insurance coverage, indemnification, performance bonds, security funds, force majeure, abandonment, authority liability, or authority warranties.

³⁸ The bill provides that the authority must grant or deny such a request for waiver within 45 days from the date of the request.

compliance with applicable codes. Further, the bill prohibits an authority from requiring the placement of small wireless facilities on any specific pole or category of poles or requiring the placement of multiple antenna systems on a single pole.

The bill prohibits an authority from limiting the placement of small wireless facilities by minimum separation distance, but provides a process by which an authority, within 14 days from the filing date of a collocation application, may request that the proposed location of a small wireless facility be moved to another location in the right-of-way and placed upon an alternative authority utility pole or support structure or may place a new utility pole. Under this process, the authority and applicant may negotiate the alternative location, including any objective design standards and reasonable spacing requirements for ground-based equipment, for 30 days from the date of the request. After the negotiation period, if the alternative location is accepted by the applicant, the applicant must notify the authority and the application is deemed granted for any such location and all other locations in the application. If no agreement is reached, the applicant must notify the authority and the authority must grant or deny the original application within 90 days from the date the application was filed.

The bill provides that an authority must limit the height of a small wireless facility to no more than 10 feet above the utility pole or structure upon which it is to be collocated. For a new utility pole, the height is limited to the tallest existing utility pole as of July 1, 2017, that is located in the same right-of-way as measured from “grade in place” within 500 feet of the proposed location. The authority may waive this limit. If there is no utility pole within 500 feet of the proposed location, the authority must limit the height of the new pole to 50 feet. Further, the bill provides that any structure permitted for collocation must comply with state airport zoning laws under ch. 333, F.S., and federal regulations related to airport airspace protections.

The bill provides that an authority may reserve space on its utility poles for future public safety uses, provided that such reservation does not preclude collocation of a small wireless facility. If replacement of the pole is necessary to accommodate the collocation of the small wireless facility and the future public safety use, the pole replacement is subject to the make-ready provisions of the bill (described in greater detail below) and the replaced pole must accommodate the future public safety use.

Further, the bill requires a wireless provider to comply with any nondiscriminatory undergrounding requirements of the authority which prohibit above-ground structures in the public right-of-way, unless waived by the authority.

The bill provides that collocation of a small wireless facility on an authority utility pole does not provide a basis for the imposition of an ad valorem tax on the authority utility pole.

For any application filed before an authority’s implementing ordinances become effective, the authority may apply its current ordinances relating to placement of communications facilities in the right-of-way with regard to registration, permitting, insurance coverage, indemnification, performance bonds, security funds, force majeure, abandonment, authority liability, or authority warranties. However, permit application requirements or utility pole height limits that conflict with the provisions of this subsection must be waived by the authority.

Collocation on Utility Poles

Under the bill, the collocation of small wireless facilities on authority utility poles is subject to the following requirements:

- An authority may not enter into an exclusive agreement with any person for the right to attach equipment to authority utility poles.
- Rates and fees for collocations on authority utility poles must be nondiscriminatory, regardless of the services provided by the collocating person.

- The rate to collocate small wireless facilities on an authority utility pole may not exceed \$150 annually per pole.
- An agreement between an authority and a wireless provider that is in effect on July 1, 2017, and that relates to the collocation of small wireless facilities in the right-of-way, including the collocation of small wireless facilities on authority utility poles, will remain in effect, subject to applicable termination provisions.
- A wireless provider may accept the rates, fees, and terms established under the bill for small wireless facilities and utility poles that are the subject of an application submitted after the rates, fees, and terms become effective.
- By the later of January 1, 2018, or 3 months after receiving its first request to collocate a small wireless facility on an authority utility pole, the person owning or controlling the authority utility pole must, by ordinance or otherwise, provide rates, fees, and terms that comply with the bill and that are nondiscriminatory and competitively neutral.

The bill establishes provisions related to “make-ready” work that may be required. “Make-ready” work generally refers to the modification of poles or lines or the installation of guys and anchors to accommodate additional facilities.

For an authority utility pole that supports aerial facilities used to provide communications or electric service, the bill requires that parties comply with the process for make-ready work under 47 U.S.C. §224 and the FCC’s implementing regulations³⁹ and provides that make-ready work must include pole replacement, if necessary.

For an authority utility pole that *does not* support aerial facilities used to provide communications or electric service, the bill requires the authority to provide a good faith estimate for any necessary make-ready work within 60 days after receipt of a complete application and requires that the make-ready work be completed within 60 days of the applicant’s acceptance of the estimate. As an alternative, the bill provides that an authority may require the applicant to provide a make-ready estimate, at the applicant’s expense, for the work necessary to support the small wireless facility, including pole replacement, and to perform the make-ready work. If pole replacement is required, the scope of the make-ready estimate is limited to the design, fabrication, and installation of a utility pole that is substantially similar in color and composition. If the authority chooses this alternative, it may not condition or restrict the manner in which the applicant obtains, develops, or provides the estimate or conducts the make-ready work subject to usual construction restoration standards for work in the right-of-way. A replaced or altered utility pole remains the property of the authority.

The bill provides that the authority may not require more make-ready work than is necessary to meet the applicable codes specified in the bill or industry standards. Further, the bill provides that fees for make-ready work may not include costs related to preexisting damage or prior noncompliance. Though it is not clear, it appears that this provision of the bill intends to refer to noncompliance with the codes specified in the bill or industry standards. The bill also provides that fees for make-ready work may not exceed actual costs or the amount charged to other non-wireless communications services providers for similar work. The bill provides that fees for make-ready work may not include any consultant fees or expenses.

³⁹ The FCC’s regulations for make-ready work under 47 U.S.C. §224 were most recently addressed in its *Report and Order on Reconsideration, Implementation of Section 224 of the Act; A National Broadband Plan for Our Future*, FCC 11-50, WC Docket No. 07-245, GN Docket No. 09-51, (2011) (*2011 Pole Attachment Order*) and in its *Order on Reconsideration, Implementation of Section 224 of the Act; A National Broadband Plan for Our Future*, FCC 15-151, WC Docket No. 07-245, GN Docket No. 09-51 (2015). The FCC regulations do not apply to attachments to government-owned utility poles.

The bill authorizes a wireless infrastructure provider⁴⁰ to apply to an authority to place utility poles in the public rights-of-way to support the collocation of small wireless facilities. The application must include an attestation that small wireless facilities will be collocated on the utility pole or structure and small wireless facilities will be utilized by a wireless services provider to provide service within 9 months from the date the application is granted. The bill provides that the authority shall accept and process the application in accordance with the application review timeframes specified in the bill for collocation applications and any applicable codes and other local codes, rules, or regulations governing the placement of utility poles in the public rights-of-way.

Other Matters

The bill specifies that it does not limit the authority of local governments to enforce historic preservation zoning regulations consistent with the preservation of local zoning authority under 47 U.S.C. s. 332(c)(7), the requirements for facility modifications under 47 U.S.C. s. 1455(a), or the National Historic Preservation Act of 1966, as amended, and the regulations adopted to implement these laws. The bill provides that an authority may enforce local codes, administrative rules, or regulations adopted by ordinance in effect on April 1, 2017 which are applicable to a historic area designated by the state or authority. The bill further provides that an authority may enforce pending local ordinances, administrative rules, or regulations applicable to a historic area designated by the state if the intent to adopt such changes had been publicly declared on or before April 1, 2017. The bill authorizes an authority to waive any such ordinances or related requirements.

Further the bill specifies that it does not authorize a person to collocate or attach small wireless facilities or micro wireless facilities on privately owned utility pole, a utility pole owned by a municipal electric utility or electric cooperative, privately owned wireless support structures, or other private property without consent of the property owner.

The bill also specifies that it does not authorize a person to collocate or attach small wireless facilities or micro wireless facilities on a utility pole, unless permitted by federal law, or erect a wireless support structure in the right-of-way within:

- A retirement community that is deed-restricted as housing for older persons as defined in s. 760.29(4)(b), F.S., has more than 5,000 residents, and has underground utilities for electric transmission or distribution; or
- A municipality that is located on a coastal barrier island as defined in s. 161.053(b)(3), F.S., has a land area of less than five square miles, has less than ten thousand residents, and, prior to the adoption of the bill, received referendum approval to issue debt to finance municipal-wide undergrounding of its utilities for electric transmission or distribution.

The bill further specifies that it does not authorize a person to collocate or attach small wireless facilities or micro wireless facilities on an authority utility pole or erect a wireless support structure in a location subject to covenants, conditions, and restrictions; articles of incorporation; and bylaws of a home owners association.

The bill provides that the approval of the installation, placement, maintenance, or operation of a small wireless facility pursuant to the bill is not to be construed to confer authorization for the provision of any voice, data, or video communications services nor for the installation, placement, maintenance, or operation of any communications facilities other than small wireless facilities in the right-of-way. Further, the bill provides that it does not affect s. 337.401(6), F.S., relating to pass-through providers.

⁴⁰ As defined in the bill, “wireless infrastructure provider” means “a person who has been certificated to provide telecommunications service in the state and who builds or installs wireless communication transmission equipment, wireless facilities, or wireless support structures, but is not a wireless services provider.”

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

The bill will have a negative fiscal impact on local government revenues if the collocation rate set forth in the bill is lower than the rates that could otherwise be established by ordinance or negotiated under local governments' existing authority. Based on information provided to staff concerning previously established or agreed rates, this appears likely.

2. Expenditures:

The bill may have an indeterminate fiscal impact on local government expenditures.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill establishes more favorable collocation rates and terms for wireless providers who wish to deploy small wireless facilities in the public rights-of-way. To the extent that the rates and terms specified in the bill are more favorable to wireless providers than the rates and terms applicable to use of the public rights-of-way in other states, Florida may see a swifter influx of capital investment in small wireless facilities. It is unclear if Florida's wireless service customers will see lower collocation costs reflected in retail service rates, as wireless service is generally offered at nationwide rates.

D. FISCAL COMMENTS:

None.

EXHIBIT

7

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Committee on Governmental Oversight and Accountability

BILL: CS/SB 596

INTRODUCER: Communications, Energy, and Public Utilities Committee and Senator Hutson and others

SUBJECT: Utilities

DATE: March 24, 2017 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Wiehle	Caldwell	CU	Fav/CS
2.	Peacock	Ferrin	GO	Pre-meeting
3.			RC	

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 596 creates the Advanced Wireless Infrastructure Deployment Act. Put very simply, it creates a process for gaining access to and use of public rights-of-way in connection with the installation of small wireless communications infrastructure.

The bill creates a process and time limits for review and approval of applications by an authority (Department of Transportation or local government entities that have jurisdiction and control of public roads). The authority must approve a complete application unless it does not meet the authority's applicable codes, defined to include "uniform building, fire, electrical, plumbing, or mechanical codes adopted by a recognized national code organization, or local amendments to those codes, enacted solely to address threats of destruction of property or injury to persons," and qualifying government historic preservation zoning regulations. This excludes consideration and application of zoning, land use, aesthetic ordinances, and of any other source of public safety protections.

The bill provides for application or permit fees and collocation or pole attachment fees. Collocation fees cannot exceed \$15.00 per year per authority utility pole. Collocation fees include the costs to alter a pole to strengthen it to support the installation of the wireless infrastructure, including costs to replace a pole if necessary. They do not include any consultant fees or expenses.

The bill does not authorize a person to collocate small wireless facilities on a privately owned utility pole, a utility pole owned by an electric cooperative, a privately owned wireless support structure, or other private property without the consent of the property owner.
The bill takes effect July 1, 2017.

II. Present Situation:

Use of Right-of-Way by Communications Services Providers

Section 337.401, F.S., authorizes the Department of Transportation (DOT or the department) and local governmental entities that have jurisdiction and control of public roads (jointly referred to as the or an authority) to prescribe and enforce reasonable rules or regulations for placing and maintaining of structures across, on, or within the right-of-way limits of a road. An authority may authorize any person who is a resident of this state or any corporation either organized under the laws of this state or licensed to do business within this state to use a right-of-way for the utility¹ in accordance with the authority's adopted rules or regulations.² The statute prohibits a utility from installing, locating, or relocating within a right-of-way unless authorized by a written permit.³ The permit must require the permitholder to be responsible for any damage resulting from the use of the right-of-way.⁴

Municipal and county rights-of-way access rules and regulations relating to communications services providers must be reasonable and nondiscriminatory and must be generally applicable to all providers of communications services.⁵ The rules and regulations must be "generally applicable" to all such providers and may not require such providers to apply for or enter into an individual license, franchise, or other agreement as a condition of using the right of way.⁶

A municipality or charter county may require and collect permit fees from any providers of communications services that use or occupy municipal or county roads or rights-of-way.⁷ To ensure nondiscriminatory and competitively neutral permit fees for communications services providers, municipalities and charter counties must elect to collect permit fees for use of the right-of-way in one of two ways. First, the local government can elect to require the payment of fees from any such providers, provided that the fees are "reasonable and commensurate with the direct and actual cost of the regulatory activity," "demonstrable," and "equitable among users of the roads or rights-of-way."⁸ If the local government makes this election, the rate of its local

¹ Existing paragraph 337.401(1)(a), F.S., refers to "any electric transmission, telephone, telegraph, or other communications services lines; pole lines; poles; railways; ditches; sewers; water, heat, or gas mains; pipelines; fences; gasoline tanks and pumps; or other structures referred to in this section and in ss. 337.402, 337.403, and 337.404 as the 'utility'." This indirectly defines the term "utility" not by type of entity or by type of service provided but by the type of structure some type of entity might use in providing some type of service.

² Section 337.401(2), F.S.

³ *Id.*

⁴ *Id.*

⁵ Section 337.401(3)(a), F.S.

⁶ *Id.*

⁷ Section 337.401(3)(c)1.a.(I), F.S.

⁸ Section 337.401(3)(c)1.a.(I), F.S. Such costs include the costs of issuing and processing permits, plan reviews, physical inspection, and direct administrative costs.

communications service tax⁹ is automatically reduced by a rate of 0.12 percent. Second, the local government can elect not to require payment of fees from any such provider and may increase its local communications service tax by a rate of up to 0.12 percent. A noncharter county may make the same election. If it chooses not to impose permit fees, it may increase its local communications service tax by a rate of up to 0.24 percent to replace the revenues it would have received for such permit fees.¹⁰

Local Government Pole Attachment Fees

With certain exceptions, the authority of a public body¹¹ to require taxes, fees, charges, or other impositions¹² from dealers of communications services for occupying its roads and rights-of-way is specifically preempted by the state.¹³ Among the taxes, fees, and charges *not* preempted¹⁴ are the following:

- Pole attachment fees charged by a local government for attachments to its utility poles.
- Amounts charged for the rental or other use of property owned by a public body which is not in the public rights-of-way to a dealer of communications services for any purpose, including, but not limited to, the placement or attachment of equipment used in the provision of communications services.
- Permit fees related to placing or maintaining facilities in or on public roads or rights-of-way pursuant to s. 337.401, F.S.

Accordingly, local governments may establish pole attachment fees for communications services facilities by ordinance or agreement.

Collocation of Wireless Communications Facilities in DOT Rights-of-Way

With respect to property acquired for state rights-of-way, the DOT is responsible for negotiating leases that provide access for wireless communications facilities.¹⁵ Payments required under such leases must be reasonable and reflect the market rate for the use of the state government-owned property. DOT is authorized to adopt rules for granting such leases, including terms and conditions.¹⁶

The DOT has entered into three competitively bid leases that allow the lessee to place wireless facilities on the DOT's rights-of-way or to sublease those rights to a third-party for the same

⁹ Local communications services taxes are authorized and governed by ch. 202, F.S.

¹⁰ Section 337.401(3)(c)2., F.S.

¹¹ Section 1.01(8), F.S., provides that a "public body" includes counties, cities, towns, villages, special tax school districts, special road and bridge districts, bridge districts, and all other districts in this state.

¹² Section 202.24(2)(b), F.S., provides, in part, that a tax, charge, fee, or other imposition includes any amount or in-kind payment of property or services which is required by ordinance or agreement to be paid or furnished to a public body by or through a dealer of communications services in its capacity as a dealer of communications services.

¹³ Section 202.24(1), F.S.

¹⁴ See s. 202.24(2)(c), F.S.

¹⁵ Section 365.172(13)(f), F.S.

¹⁶ *Id.*

purpose.¹⁷ The DOT indicates that it derives an income stream from each of these agreements.¹⁸ The DOT Turnpike System, which includes the Western Beltway, Suncoast Parkway, Veterans Expressway, I-4 connector, Polk Parkway, Sawgrass Expressway, Turnpike Mainline, Beachline Expressway, and Seminole Expressway, is not subject to rights-of-way leases for wireless facilities.¹⁹

Federal Law on Wireless Facilities Siting

The FCC interprets and implements certain provisions of federal law that are designed, among other purposes, to “remove barriers to deployment of wireless network facilities by hastening the review and approval of siting applications by local land-use authorities.”²⁰ These statutory provisions preserve state and local governments’ authority to control the “placement, construction, and modification of personal wireless service facilities” and to manage “use of public rights-of-way,” but they prohibit state and local governments from using certain unreasonable criteria in making such decisions.²¹ Under the authority granted by these provisions, the FCC has issued orders to clarify the “maximum presumptively reasonable time frames for review of siting applications and the criteria local governments may apply in deciding whether to approve them.”²²

Federal law establishes that state and local governments may not establish laws, regulations, or other requirements that prohibit or have the effect of prohibiting the ability of any entity to provide personal wireless services²³ or other telecommunications services.²⁴ The FCC has interpreted these provisions as precluding state or local government actions that materially inhibit the ability of an entity to compete in a fair and balanced legal and regulatory environment. Federal circuit courts have varied on the particular standards to apply in this area.²⁵

Further, federal law provides that state and local governments may manage the public rights-of-way and may require fair and reasonable compensation from telecommunications providers for use of those rights-of-way on a nondiscriminatory basis.²⁶ The FCC has not interpreted this

¹⁷ Florida Department of Transportation, SB 596 Legislative Bill Analysis (Jan. 30, 2017)(Copy on file with the Governmental Oversight and Accountability Committee). The analysis identifies the following leases: American Tower/Lodestar, entered into on March 25, 1999, with a thirty-year term; Rowstar #1, entered into on December 4, 2014, with a ten-year term, extendable for up to four additional ten year terms at the discretion of Rowstar; and Rowstar #2, entered into on December 29, 2016, with a ten-year term, extendable for up to four additional ten year terms at the discretion of Rowstar.

¹⁸ *Id.*

¹⁹ *Id.*

²⁰ See FEDERAL COMMUNICATIONS COMMISSION, *Comments Sought on Mobilitie, LLC Petition for Declaratory Ruling and Possible Ways to Streamline Deployment Of Small Cell Infrastructure (FCC 2016 Notice)*, WT Docket No. 16-421, DA 16-1427, December 22, 2016, at p. 2; 47 U.S.C. §§253, 332(c)(7), and 1455(a).

²¹ *Id.* at p. 5, citing 47 U.S.C. §§253(c) and 332(c)(7)(A).

²² *Id.* at p. 2

²³ Under 47 U.S.C. 332(c)(7), “personal wireless services” are defined as “commercial mobile services, unlicensed wireless services, and common carrier wireless exchange access services.”

²⁴ *FCC 2016 Notice* at p. 10, citing 47 U.S.C. §§253(a) and 332(c)(7).

²⁵ *Id.*

²⁶ *Id.* at p. 12, citing 47 U.S.C. §253(c).

provision, and federal circuit courts have varied on the issue of what constitutes “fair and reasonable” compensation.²⁷

In December 2016, in response to a petition for declaratory ruling, the FCC issued a public notice seeking comment on streamlining the deployment of small cell infrastructure by improving wireless facilities siting policies.²⁸ In its notice, the FCC summarized the issues:

To satisfy consumers’ rapidly growing demand for wireless broadband and other services, wireless companies are actively expanding the network capacity needed to maintain and improve the quality of existing services and to support the introduction of new technologies and services. In particular, many wireless providers are deploying small cells and distributed antenna systems (DAS) to meet localized needs for coverage and increased capacity in outdoor and indoor environments. Although the facilities used in these networks are smaller and less obtrusive than traditional cell towers and antennas, they must be deployed more densely – i.e., in many more locations – to function effectively. As a result, local land-use authorities in many areas are facing substantial increases in the volume of siting applications for deployment of these facilities. This trend in infrastructure deployment is expected to continue, and even accelerate, as wireless providers begin rolling out 5G services.

This creates a dilemma. We recognize, as did Congress in enacting Sections 253 and 332 of the Communications Act, that localities play an important role in preserving local interests such as aesthetics and safety. At the same time, the Commission has a statutory mandate to facilitate the deployment of network facilities needed to deliver more robust wireless services to consumers throughout the United States. It is our responsibility to ensure that this deployment of network facilities does not become subject to delay caused by unnecessarily time-consuming and costly siting review processes that may be in conflict with the Communications Act.

The stated purpose of the FCC’s request for comments is to develop a factual record to assess whether and to what extent the process of local land-use authorities’ review of siting applications is hindering, or is likely to hinder, the deployment of wireless infrastructure. Among the matters on which the FCC is seeking comment and guidance are questions specifically related to access to state and local government rights-of-way and the fees imposed for such access.²⁹ The FCC indicated that this “data-driven evaluation will make it possible to reach well-supported decisions on which further Commission actions, if any, would most effectively address any problem, while preserving local authorities’ ability to protect interests within their purview.”³⁰

²⁷ *Id.* at p. 13.

²⁸ *Id.*

²⁹ *Id.* at pp. 8-14.

³⁰ *Id.* at p. 2.

Deployment of Small Wireless Facilities in Florida

Wireless service providers and wireless infrastructure providers have begun the deployment of small cell wireless infrastructure in various jurisdictions within Florida. These providers indicate that their efforts have been hampered to varying degrees by some local governments that have imposed conditions or moratoria on the siting of small cell facilities.³¹ In general, these moratoria indicate that they are temporary measures designed to allow the local government to review their standards, regulations, and requirements related to siting of wireless communications facilities to address small cell facilities.³² In one instance, the municipality has renewed its moratoria on multiple occasions, extending its effect from the original six months to over 30 months.³³

III. Effect of Proposed Changes:

The bill creates the Advanced Wireless Infrastructure Deployment Act, a new subsection s. 337.401(7), F.S.

Definitions

The bill creates definitions, including the following related to wireless entities:

- An “applicant” is a person who submits an application and is a wireless provider.
- An “application” is a request submitted by an applicant to an authority for a permit to collocate small wireless facilities.
- A “wireless provider” is a wireless services provider or a wireless infrastructure provider.
- A “wireless services provider” is a person who provides wireless services.
- “Wireless services” are any services provided using licensed or unlicensed spectrum, whether at a fixed location or mobile, using wireless facilities.
- A “wireless infrastructure provider” is a person certificated to provide telecommunications service in the state and who builds or installs wireless communication transmission equipment, wireless facilities, or wireless support structures, but is not a wireless services provider.

The bill defines four types of wireless infrastructure:

- A “wireless facility” is equipment at a fixed location which enables wireless communications between user equipment and a communications network, including radio transceivers, antennas, wires, coaxial or fiber optic cable or other cables, regular and backup power supplies, and comparable equipment, regardless of technological configuration, and equipment associated with wireless communications. The term includes small wireless facilities. The term does not include:
 - The structure or improvements on, under, within, or adjacent to the structure on which the equipment is collocated;
 - Wireline backhaul facilities; or

³¹ Several municipalities and counties have adopted moratoria, including the City of Fort Lauderdale, the City of Tallahassee, and Pinellas County.

³² See, e.g., City of Tallahassee, Resolution No. 16-R-42, December 2016.

³³ City of Fort Lauderdale, Resolution No. 17-30, February 21, 2017.

- Coaxial or fiber-optic cable that is between wireless structures or utility poles or that is otherwise not immediately adjacent to or directly associated with a particular antenna.
- A “small wireless facility” is a wireless facility that meets both the following qualifications:
 - Each antenna associated with the facility is located inside an enclosure of no more than six cubic feet in volume or, in the case of antennas that have exposed elements, each antenna and all of its exposed elements could fit within an enclosure of no more than six cubic feet in volume; and
 - All other wireless equipment associated with the facility is cumulatively no more than 28 cubic feet in volume. The following types of associated ancillary equipment are not included in the calculation of equipment volume: electric meters, concealment elements, telecommunications demarcation boxes, ground-based enclosures, grounding equipment, power transfer switches, cut-off switches, vertical cable runs for the connection of power and other services, and utility poles or other support structures.
- A “micro wireless facility” is a small wireless facility having dimensions no larger than 24 inches in length, 15 inches in width, and 12 inches in height and that has an exterior antenna, if any, no longer than 11 inches.
- An “antenna” is communications equipment that transmits or receives electromagnetic radio frequency signals used in providing wireless services.

The bill defines three types of structures on which an applicant may seek to locate infrastructure:

- An “authority utility pole” is a utility pole owned by an authority in the right-of-way. The term does not include a utility pole owned by a municipal electric company.
- A “utility pole” is a pole or similar structure that is used in whole or in part to provide communications services or for electric distribution, lighting, traffic control, signage, or a similar function.
- A “wireless support structure” is a freestanding structure, such as a monopole, a guyed or self-supporting tower, a billboard, or another existing or proposed structure designed to support or capable of supporting wireless facilities. The term does not include a utility pole.

The bill also creates the following definitions:

- “Applicable codes” means uniform building, fire, electrical, plumbing, or mechanical codes adopted by a recognized national code organization, or local amendments to those codes, enacted solely to address threats of destruction of property or injury to persons. The term also includes local government historic preservation zoning regulations consistent with the preservation of local zoning authority under 47 U.S.C s. 332(c)(7), the requirements for facility modifications under 47 U.S.C. s. 1455(a), or the National Historic Preservation Act of 1966, as amended, and the regulations adopted to implement these laws.
- The bill does not define “authority,” however existing s. 337.401(1)(a), F.S., does indirectly, stating: “The department and local governmental entities, referred to in this section and in ss. 337.402, 337.403, and 337.404, F.S., as the ‘authority’” The department here is the Department of Transportation (DOT or the department).
- “Collocate” or “collocation” means to install, mount, maintain, modify, operate, or replace one or more wireless facilities on, under, within, or adjacent to a wireless support structure or utility pole.
- “FCC” means the Federal Communications Commission.

Application

The process necessarily begins with an application; however, the bill does not expressly authorize an authority to develop a form or to require that an applicant provide specific information, although it does contain statements that *imply* some level of authorization. For example, it prohibits an authority from requiring an applicant to provide more information to obtain a permit than is required of electric service providers and other communications service providers that are not wireless service providers.³⁴ A proponent has argued that this prohibition against requiring more information *indirectly authorizes* an authority to require an applicant to provide the same information as the listed providers. The bill also makes numerous references to a “complete” application. An application cannot be determined to be complete or incomplete without some standard by which to judge, which presumably would be set forth in requirements for the application and permit. However, this, too, is implied or indirect authority.

It *appears* that the application process is for small wireless facilities only, although the bill defines three other types of infrastructure:

- When the bill mentions infrastructure in substantive provisions, it is usually small wireless facilities, and the definition of “application” is a request submitted by an applicant to an authority for a permit to collocate small wireless facilities.³⁵
- However, it is possible that an application could be for installation of a micro wireless facility. A micro wireless facility is a type of small wireless facility, so it could be included in the substantive provisions on small wireless facilities. Additionally, the only use of the term micro wireless facility is in a prohibition against authorities requiring approval or fees for specified activities involving micro wireless facilities,³⁶ which does not necessarily rule out an application for other uses of these facilities.
- The term antenna is used most often in defining the components of other infrastructure and is used only once in a substantive provision, which prohibits an authority from requiring placement of multiple antenna systems on a single utility pole.³⁷
- The bill only used the term “wireless facility” in defining “small wireless facility.”

Application Review and Approval

The bill establishes the following process and time requirements for the application review and approval:

- The authority must determine whether the application is complete³⁸ and notify the applicant by electronic mail within 10 days after receiving an application.³⁹ If an authority deems an application incomplete, the authority must specifically identify the missing information. The application is deemed complete when the applicant submits all documents, information, and

³⁴ Section 337.401(7)(d)2., F.S., as proposed by CS/SB 596.

³⁵ Definitions are not substantive law, so this only provides some level of guidance in interpreting the substantive provisions.

³⁶ Section 337.401(7)(e)3., F.S., as proposed by CS/SB 596.

³⁷ Section 337.401(7)(d)3., F.S., as proposed by CS/SB 596.

³⁸ The bill does not authorize authorities to establish requirements or standards by which completeness of an application may be determined.

³⁹ Ten days may be an inadequate time for a local government to make the engineering determination that a proposed location, installation, and resulting wind load comply with applicable codes.

fees specifically enumerated in the authority's permit application form or if the authority fails to provide notification to the applicant within 10 days.⁴⁰

- If the authority fails to approve or deny a complete application within 60 days after receipt of the application, the application is deemed approved.⁴¹
- The authority must notify the applicant of approval or denial by electronic mail. The bill requires an authority to approve a complete application unless it does not meet the authority's applicable codes.⁴² If the authority denies the application, the authority must specify in writing the basis for denial, including the specific code provisions on which the denial was based, and send the documentation to the applicant by electronic mail on the day the authority denies the application. The applicant then has 30 days after notice of the denial is sent to the applicant to cure the identified deficiencies and resubmit the application. The authority then must approve or deny the revised application within 30 days after receipt or the application will be deemed approved. Any subsequent review is limited to the deficiencies cited in the denial.⁴³
- An applicant seeking to collocate small wireless facilities within the jurisdiction of a single authority may, at the applicant's discretion, file a consolidated application and receive a single permit for the collocation of multiple small wireless facilities.⁴⁴ Presumably, the above time limit requirements apply to such a consolidated application.

In reviewing an application, the authority must process applications on a nondiscriminatory basis.⁴⁵ The bill prohibits the authority from doing the following:

- Directly or indirectly requiring an applicant to perform services unrelated to the collocation for which approval is sought, such as in-kind contributions to the authority, including reserving fiber, conduit, or pole space for the authority;⁴⁶
- Requiring an applicant to provide more information to obtain a permit than is required of electric service providers and other communications service providers that are not wireless service providers;⁴⁷
- Requiring the placement of small wireless facilities on any specific utility pole or category of poles or requiring multiple antenna systems on a single utility pole;⁴⁸
- Limit the placement of small wireless facilities by minimum separation distances or a maximum height limitation; however, an authority may limit the height of a small wireless facility to no more than 10 feet above the tallest existing utility pole, measured from grade in place within 500 feet of the proposed location of the small wireless facility. If there is no utility pole within 500 feet, the authority may limit the height of the small wireless facility to no more than 60 feet. The height limitations do not apply to the placement of any small

⁴⁰ Section 337.401(7)(d)5., F.S., as proposed by CS/SB 596.

⁴¹ Section 337.401(7)(d)6., F.S., as proposed by CS/SB 596.

⁴² The term "applicable codes" is defined to include "uniform building, fire, electrical, plumbing, or mechanical codes adopted by a recognized national code organization, or local amendments to those codes, enacted solely to address threats of destruction of property or injury to persons." This excludes consideration and application of zoning, land use, and aesthetic ordinances and of any other source of public safety protections.

⁴³ Section 337.401(7)(d)7., F.S., as proposed by CS/SB 596.

⁴⁴ Section 337.401(7)(d)8., F.S., as proposed by CS/SB 596.

⁴⁵ Section 337.401(7)(d)6., F.S., as proposed by CS/SB 596.

⁴⁶ Section 337.401(7)(d)1., F.S., as proposed by CS/SB 596.

⁴⁷ Section 337.401(7)(d)2., F.S., as proposed by CS/SB 596.

⁴⁸ Section 337.401(7)(d)3., F.S., as proposed by CS/SB 596.

wireless facility on a utility pole or wireless support structure constructed on or before June 30, 2017, if the small wireless facility does not extend more than 10 feet above the structure;⁴⁹ and

- Enter into an exclusive arrangement with any person for the right to attach equipment to authority utility poles.⁵⁰

The bill prohibits requiring either approval or fees for:

- Routine maintenance;
- Replacement of existing wireless facilities with wireless facilities that are substantially similar or the same size or smaller; or
- Installation, placement, maintenance, or replacement of micro wireless facilities that are suspended on cables strung between existing utility poles in compliance with applicable codes by a communications service provider authorized to occupy the rights-of-way and who is remitting taxes under chapter 202, F.S.⁵¹

Fees

The bill addresses two types of fees. The first is an application or permit fee. The bill provides that an authority may charge a permit fee only in accordance with existing subsection (3) on fees for access to rights-of-way.⁵² That subsection allows local governments to choose whether to charge permit fees. The local government can choose to require and collect permit fees from any providers of communications services that use or occupy municipal or county roads or rights-of-way, in which case the rate of the local communications services tax imposed by such jurisdiction, as computed under s. 202.20, F.S., shall automatically be reduced by a rate of 0.12 percent. Alternatively, the local government can elect not to require and collect permit fees in which case the rate for the local communications services tax as computed under s. 202.20, F.S., for that jurisdiction may be increased by ordinance or resolution by an amount not to exceed a rate of 0.12 percent.

The second type of fee is a pole attachment fee, or collocation fee, which includes any costs of make-ready work.⁵³ The rates and fees for collocations on authority utility poles must be nondiscriminatory, regardless of the services provided by the collocating person. The rate to collocate equipment on authority utility poles may not exceed the lesser of the annual recurring rate that would be permitted under rules adopted by the FCC under 47 U.S.C. s. 224(d) if the collocation rate were regulated by the FCC or \$15 per year per authority utility pole.⁵⁴

⁴⁹ Section 337.401(7)(d)4., F.S., as proposed by CS/SB 596.

⁵⁰ Section 337.401(7)(f)1., F.S., as proposed by CS/SB 596.

⁵¹ Section 337.401(7)(e), F.S., as proposed by CS/SB 596.

⁵² Section 337.401(7)(d), F.S., as proposed by CS/SB 596.

⁵³ “Make-ready” generally refers to the modification of poles or lines or the installation of guys and anchors to accommodate additional facilities. Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, CC Docket Nos. 96-98, 95-185, Order on Reconsideration, 14 FCC Rcd 18049, 18056 n.50 (1999) (Local Competition Reconsideration Order). https://apps.fcc.gov/edocs_public/attachmatch/FCC-11-50A1.pdf (Last accessed March 2, 2017).

⁵⁴ Section 337.401(7)(f)3., F.S., as proposed by CS/SB 596.

If the authority has an existing pole attachment rate, fee, or other term that does not comply with this subsection, the authority must, no later than January 1, 2018, revise the rate, fee, or term to comply with this subsection.

Persons owning or controlling authority utility poles must offer rates, fees, and other terms that comply with this subsection. By the later of January 1, 2018, or 3 months after receiving a request to collocate its first small wireless facility on a utility pole owned or controlled by an authority, the person owning or controlling the authority utility pole must make available, through ordinance or otherwise, rates, fees, and terms for the collocation of small wireless facilities on the authority utility pole which comply with this subsection.

The rates, fees, and terms must be nondiscriminatory, competitively neutral, and commercially reasonable and must comply with this subsection.

The bill provides procedures and timelines for make-ready work:

- If the authority utility pole supports aerial facilities used to provide communications services or electric service, the parties must comply with the process for make-ready work under 47 U.S.C. s. 224⁵⁵ and implementing regulations.⁵⁶ The good faith estimate of the person

⁵⁵ Under this law, a rate is just and reasonable if it assures a utility the recovery of not less than the additional costs of providing pole attachments, nor more than an amount determined by multiplying the percentage of the total usable space, or the percentage of the total duct or conduit capacity, which is occupied by the pole attachment by the sum of the operating expenses and actual capital costs of the utility attributable to the entire pole, duct, conduit, or right-of-way.
<https://www.law.cornell.edu/uscode/text/47/224> (Last accessed March 2, 2017.)

⁵⁶ A utility that has received a complete application for pole attachment from a cable operator or telecommunications carrier must respond within 45 days of receipt of the application (or within 60 days, in the case of larger orders, defined as orders up to the lesser of 3000 poles or 5 percent of the utility's poles in a state). This response may be a notification that the utility has completed a survey of poles for which access has been requested. A complete application is an application that provides the utility with the information necessary under its procedures to begin to survey the poles. If the request for attachment is not denied, the utility must present an estimate of charges to perform all necessary make-ready work within 14 days of providing the response. A utility may withdraw an outstanding estimate of charges to perform make-ready work within 14 days after the estimate is presented. A cable operator or telecommunications carrier may accept a valid estimate and make payment anytime after receipt of an estimate but before the estimate is withdrawn.

Upon receipt of payment of the estimate, the utility must immediately provide written notice to all known entities with existing attachments that may be affected by the make-ready:

- For attachments in the communications space, the utility must complete all make-ready work no later than 60 days after notification is sent (or 105 days in the case of larger orders). If the utility has not completed the make-ready work by within this time, the cable operator or telecommunications carrier requesting access may complete the specified make-ready.
- For wireless attachments above the communications space, the utility must complete all make-ready work no later than 90 days after notification is sent (or 135 days in the case of larger orders). The utility must complete the make-ready work by this date.

A utility may deviate from the time limits specified in this section:

- Before offering an estimate of charges if the parties have no agreement specifying the rates, terms, and conditions of attachment.
- During performance of make-ready for good and sufficient cause that renders it infeasible for the utility to complete the make-ready work within the prescribed time frame. A utility that so deviates shall immediately notify, in writing, the cable operator or telecommunications carrier requesting attachment and other affected entities with existing attachments, and shall include the reason for and date and duration of the deviation. The utility shall deviate from the time limits specified in this section for a period no longer than necessary and shall resume make-ready performance without discrimination when it returns to routine operations.

owning or controlling the pole for any make-ready work necessary to enable the pole to support the requested collocation must include pole replacement if necessary.

- If the authority utility pole does not support aerial facilities used to provide communications services or electric service, the authority must provide a good faith estimate for any make-ready work necessary to enable the pole to support the requested collocation, including necessary pole replacement, within 60 days after receipt of a complete application. Make-ready work, including any pole replacement, must be completed within 60 days after written acceptance of the good faith estimate by the applicant.
- The authority may not require more make-ready work than is required to meet applicable codes or industry standards. Fees for make-ready work may not include costs related to preexisting damage or prior noncompliance. Fees for make-ready work, including any pole replacement, may not exceed actual costs or the amount charged to communications service providers other than wireless service providers for similar work and may not include any consultant fees or expenses.

For many local government authorities, the technology, pole attachments, and siting process contemplated in the bill are relatively new, and it may take time and experience to determine what is necessary to support the wireless infrastructure safely. Consequently, initial implementation of the bill may require consultants to obtain reasonable assurances of public safety. However, the bill prohibits recovery of any consultant fees or expenses.⁵⁷

The bill provides that it does not authorize a person to collocate small wireless facilities on a privately owned utility pole, a utility pole owned by an electric cooperative, a privately owned wireless support structure, or other private property without the consent of the property owner.

The bill provides that the new subsection may not be construed to limit local governments' authority to enforce historic preservation zoning regulations consistent with the preservation of local zoning authority under 47 U.S.C s. 332(c)(7), the requirements for facility modifications under 47 U.S.C. s.1455(a), or the National Historic Preservation Act of 1966, as amended, and the regulations adopted to implement these laws.

The bill takes effect July 1, 2017.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

Subsection (b) of section 18, Article VII of the Florida Constitution, provides that except upon the approval of each house of the Legislature by a two-thirds vote of the membership, the Legislature may not enact, amend, or repeal any general law if the anticipated effect of doing so would be to reduce the authority that municipalities or counties have to raise revenue in the aggregate, as such authority existed on February 1,

47 CFR § 1.1420 - Timeline for access to utility poles. <https://www.law.cornell.edu/cfr/text/47/1.1420> (Last accessed March 2, 2017).

⁵⁷ Section 337.401(7)(f)5.d., F.S., as proposed by CS/SB 596.

1989. However, the mandate requirements do not apply to laws having an insignificant impact, which for Fiscal Year 2016-2017 was \$2 million or less.^{58,59,60}

The county/municipality mandates provision of section 18, Article VII of the Florida Constitution, may apply because this bill prohibits governmental entities with authority over public roads and rights-of-way from recovering any consultant fees or expenses relating to preparing a pole for use by a wireless provider. Given the novelty of the infrastructure, pole attachments, and potential risks of liability, local government authorities may need to make frequent use of consultants to ensure public safety, and the bill prohibits recovery of these consultant costs. The Revenue Estimating Conference has not examined the fiscal impact of this bill, however, the bill's impact may exceed the \$2 million threshold.

The bill does not appear to qualify under any exemption or exception. If the bill does qualify as a mandate, final passage must be approved by two-thirds of the membership of each house of the Legislature.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

According to information provided by opponents of the bill, currently the amount of the pole attachment fee is subject only to market forces, and some authorities are charging considerable more than the bill's maximum of \$15.00 dollars per attachment per year; the Jacksonville Electric Authority's Small Cell Site Rental Schedule, for example, shows a charge of \$1,236.00 per year for each small cell site.

B. Private Sector Impact:

Wireless providers should be able to provide better service to customers.

⁵⁸ FLA. CONST. art. VII, s. 18(d).

⁵⁹ An insignificant fiscal impact is the amount not greater than the average statewide population for the applicable fiscal year times \$0.10. See Florida Senate Committee on Community Affairs, *Interim Report 2012-115: Insignificant Impact*, (Sept. 2011), available at <http://www.flsenate.gov/PublishedContent/Session/2012/InterimReports/2012-115ca.pdf> (last visited Feb. 13, 2017).

⁶⁰ Based on the Demographic Estimating Conference's population adopted on November 1, 2016. The conference packet is available at <http://edr.state.fl.us/Content/conferences/population/ConferenceResults.pdf> (last visited Feb. 13, 2017).

C. Government Sector Impact:

Authorities may have difficulty and expenses in early implementation as the technology and installations involved are new uses of rights-of-way and the process includes engineering determinations of wind load, structural integrity, and safety.

The bill may conflict with the requirements of s. 365.172(12)(f), F.S., that provides the DOT the ability to generate revenue via competitive leases of its right-of-way. The DOT currently receives revenue of \$1.8 million from one of its competitively bid leases for space on agency owned poles it its right-of-way.⁶¹ These DOT leasees have the exclusive contractual right to sublease to other entities, including wireless telecommunications providers. If the existing agreements are terminated or rendered void if the bill passes, the DOT will no longer collect \$1.8 million in revenue for the 2018-2019 fiscal year and approximately that amount for each subsequent fiscal year.⁶² Under the bill, it appears that these leases would lose their exclusivity.⁶³ The issue of impairment of contract might result in litigation for these leases.

The DOT also notes that the operational and technological impacts of the bill will have significant fiscal ramifications, including roadway safety, maintenance and operation, pole or free standing structure maintenance, and fee restrictions.⁶⁴

According to DOT, its toll roads utilize various radio frequency (RF) based technologies that are central to tolling operations.⁶⁵ The bill does not authorize the DOT to require the wireless telecommunications facilities located on DOT right-of ways be compatible with or not interfere with current and future RF technology used on DOT right-of-ways. Unplanned interruptions of revenue generating activities of Turnpike facilities granted by the bill may violate Turnpike bond covenants.⁶⁶

VI. Technical Deficiencies:

None.

VII. Related Issues:

The bill does not address any responsibility or liability of wireless providers relating to potential personal injury or property damage.

VIII. Statutes Affected:

This bill substantially amends section 337.401 of the Florida Statutes.

⁶¹ See Florida Department of Transportation, SB 596 Legislative Bill Analysis (Jan. 30, 2017)(Copy on file with the Governmental Oversight and Accountability Committee).

⁶² *Id.*

⁶³ *Id.*

⁶⁴ *Id.*

⁶⁵ *Id.*

⁶⁶ *Id.*

IX. Additional Information:**A. Committee Substitute – Statement of Substantial Changes:**

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS by Communications, Energy, and Public Utilities on March 7, 2017:

- Amends the definition of “applicable codes” to include qualifying local government historic preservation zoning regulations,
- Amends the definition of “authority utility pole” to exclude a utility pole owned by a municipal electric company,
- Excludes from the definition of “wireless facility” wireline backhaul facilities and coaxial or fiber-optic cable that is between wireless structures or utility poles or that is otherwise not immediately adjacent to or directly associated with a particular antenna,
- Makes the prohibition against an authority requiring approval or fees relating to micro wireless facilities that are suspended applicable to facilities suspended from any type of cable, not just “messenger” cables,
- Provides that the new subsection does not authorize collocation of small wireless facilities on a utility pole owned by an electric cooperative, and
- Provides that the new subsection may not be construed to limit local government’s authority to qualifying enforce historic preservation zoning regulations.

B. Amendments:

None.

EXHIBIT

8

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Committee on Governmental Oversight and Accountability

BILL: CS/CS/SB 596

INTRODUCER: Governmental Oversight and Accountability Committee; Communications, Energy, and Public Utilities Committee; and Senator Hutson and others

SUBJECT: Utilities

DATE: March 29, 2017

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Wiehle	Caldwell	CU	Fav/CS
2.	Peacock	Ferrin	GO	Fav/CS
3.			RC	

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/CS/SB 596 creates the Advanced Wireless Infrastructure Deployment Act. Put very simply, it creates a process for gaining access to and use of public rights-of-way in connection with the installation of small wireless communications infrastructure.

The bill creates a process and time limits for review and approval of applications by an authority. An authority is defined as a county or municipality having jurisdiction and control of the rights-of-way of any public road. An authority does not include the Department of Transportation, and its rights-of-way are excluded from this bill. The authority must approve a complete application unless it does not meet the authority's applicable codes, defined to include "uniform building, fire, electrical, plumbing, or mechanical codes adopted by a recognized national code organization, or local amendments to those codes, enacted solely to address threats of destruction of property or injury to persons," and qualifying government historic preservation zoning regulations. This excludes consideration and application of zoning, land use, aesthetic ordinances, and of any other source of public safety protections.

The bill provides for application or permit fees and collocation or pole attachment fees. Collocation fees cannot exceed \$15.00 per year per authority utility pole. Collocation fees include the costs to alter a pole to strengthen it to support the installation of the wireless infrastructure, including costs to replace a pole if necessary. They do not include any consultant fees or expenses.

The bill does not authorize a person to collocate small wireless facilities on a privately owned utility pole, a utility pole owned by an electric cooperative or by a municipal electric utility, a privately owned wireless support structure, or other private property without the consent of the property owner.

Additionally, the bill does not authorize a person to collocate small wireless facilities or micro wireless facilities on a utility pole or erect a wireless support structure in the right-of-way located within a retirement community that is deed-restricted for specified older persons, has more than 5,000 residents, and has underground utilities.

The bill takes effect July 1, 2017.

II. Present Situation:

Use of Right-of-Way by Communications Services Providers

Section 337.401, F.S., authorizes the Department of Transportation (DOT or the department) and local governmental entities that have jurisdiction and control of public roads (jointly referred to as the or an authority) to prescribe and enforce reasonable rules or regulations for placing and maintaining of structures across, on, or within the right-of-way limits of a road. An authority may authorize any person who is a resident of this state or any corporation either organized under the laws of this state or licensed to do business within this state to use a right-of-way for the utility¹ in accordance with the authority's adopted rules or regulations.² The statute prohibits a utility from installing, locating, or relocating within a right-of-way unless authorized by a written permit.³ The permit must require the permitholder to be responsible for any damage resulting from the use of the right-of-way.⁴

Municipal and county rights-of-way access rules and regulations relating to communications services providers must be reasonable and nondiscriminatory and must be generally applicable to all providers of communications services.⁵ The rules and regulations must be "generally applicable" to all such providers and may not require such providers to apply for or enter into an individual license, franchise, or other agreement as a condition of using the right of way.⁶

A municipality or charter county may require and collect permit fees from any providers of communications services that use or occupy municipal or county roads or rights-of-way.⁷ To ensure nondiscriminatory and competitively neutral permit fees for communications services

¹ Existing paragraph 337.401(1)(a), F.S., refers to "any electric transmission, telephone, telegraph, or other communications services lines; pole lines; poles; railways; ditches; sewers; water, heat, or gas mains; pipelines; fences; gasoline tanks and pumps; or other structures referred to in this section and in ss. 337.402, 337.403, and 337.404 as the 'utility'." This indirectly defines the term "utility" not by type of entity or by type of service provided but by the type of structure some type of entity might use in providing some type of service.

² Section 337.401(2), F.S.

³ *Id.*

⁴ *Id.*

⁵ Section 337.401(3)(a), F.S.

⁶ *Id.*

⁷ Section 337.401(3)(c)1.a.(I), F.S.

providers, municipalities and charter counties must elect to collect permit fees for use of the right-of-way in one of two ways. First, the local government can elect to require the payment of fees from any such providers, provided that the fees are “reasonable and commensurate with the direct and actual cost of the regulatory activity,” “demonstrable,” and “equitable among users of the roads or rights-of-way.”⁸ If the local government makes this election, the rate of its local communications service tax⁹ is automatically reduced by a rate of 0.12 percent. Second, the local government can elect not to require payment of fees from any such provider and may increase its local communications service tax by a rate of up to 0.12 percent. A noncharter county may make the same election. If it chooses not to impose permit fees, it may increase its local communications service tax by a rate of up to 0.24 percent to replace the revenues it would have received for such permit fees.¹⁰

Local Government Pole Attachment Fees

With certain exceptions, the authority of a public body¹¹ to require taxes, fees, charges, or other impositions¹² from dealers of communications services for occupying its roads and rights-of-way is specifically preempted by the state.¹³ Among the taxes, fees, and charges *not* preempted¹⁴ are the following:

- Pole attachment fees charged by a local government for attachments to its utility poles.
- Amounts charged for the rental or other use of property owned by a public body which is not in the public rights-of-way to a dealer of communications services for any purpose, including, but not limited to, the placement or attachment of equipment used in the provision of communications services.
- Permit fees related to placing or maintaining facilities in or on public roads or rights-of-way pursuant to s. 337.401, F.S.

Accordingly, local governments may establish pole attachment fees for communications services facilities by ordinance or agreement.

Collocation of Wireless Communications Facilities in DOT Rights-of-Way

With respect to property acquired for state rights-of-way, the DOT is responsible for negotiating leases that provide access for wireless communications facilities.¹⁵ Payments required under such leases must be reasonable and reflect the market rate for the use of the state government-

⁸ Section 337.401(3)(c)1.a.(I), F.S. Such costs include the costs of issuing and processing permits, plan reviews, physical inspection, and direct administrative costs.

⁹ Local communications services taxes are authorized and governed by ch. 202, F.S.

¹⁰ Section 337.401(3)(c)2., F.S.

¹¹ Section 1.01(8), F.S., provides that a “public body” includes counties, cities, towns, villages, special tax school districts, special road and bridge districts, bridge districts, and all other districts in this state.

¹² Section 202.24(2)(b), F.S., provides, in part, that a tax, charge, fee, or other imposition includes any amount or in-kind payment of property or services which is required by ordinance or agreement to be paid or furnished to a public body by or through a dealer of communications services in its capacity as a dealer of communications services.

¹³ Section 202.24(1), F.S.

¹⁴ See s. 202.24(2)(c), F.S.

¹⁵ Section 365.172(13)(f), F.S.

owned property. DOT is authorized to adopt rules for granting such leases, including terms and conditions.¹⁶

The DOT has entered into three competitively bid leases that allow the lessee to place wireless facilities on the DOT's rights-of-way or to sublease those rights to a third-party for the same purpose.¹⁷ The DOT indicates that it derives an income stream from each of these agreements.¹⁸ The DOT Turnpike System, which includes the Western Beltway, Suncoast Parkway, Veterans Expressway, I-4 connector, Polk Parkway, Sawgrass Expressway, Turnpike Mainline, Beachline Expressway, and Seminole Expressway, is not subject to rights-of-way leases for wireless facilities.¹⁹

Federal Law on Wireless Facilities Siting

The FCC interprets and implements certain provisions of federal law that are designed, among other purposes, to “remove barriers to deployment of wireless network facilities by hastening the review and approval of siting applications by local land-use authorities.”²⁰ These statutory provisions preserve state and local governments’ authority to control the “placement, construction, and modification of personal wireless service facilities” and to manage “use of public rights-of-way,” but they prohibit state and local governments from using certain unreasonable criteria in making such decisions.²¹ Under the authority granted by these provisions, the FCC has issued orders to clarify the “maximum presumptively reasonable time frames for review of siting applications and the criteria local governments may apply in deciding whether to approve them.”²²

Federal law establishes that state and local governments may not establish laws, regulations, or other requirements that prohibit or have the effect of prohibiting the ability of any entity to provide personal wireless services²³ or other telecommunications services.²⁴ The FCC has interpreted these provisions as precluding state or local government actions that materially inhibit the ability of an entity to compete in a fair and balanced legal and regulatory environment. Federal circuit courts have varied on the particular standards to apply in this area.²⁵

¹⁶ *Id.*

¹⁷ Florida Department of Transportation, *2017 Legislative Bill Analysis SB 596* (Jan. 30, 2017) (Copy on file with the Governmental Oversight and Accountability Committee). The analysis identifies the following leases: American Tower/Lodestar, entered into on March 25, 1999, with a thirty-year term; Rowstar #1, entered into on December 4, 2014, with a ten-year term, extendable for up to four additional ten year terms at the discretion of Rowstar; and Rowstar #2, entered into on December 29, 2016, with a ten-year term, extendable for up to four additional ten year terms at the discretion of Rowstar.

¹⁸ *Id.*

¹⁹ *Id.*

²⁰ See FEDERAL COMMUNICATIONS COMMISSION, *Comments Sought on Mobilitie, LLC Petition for Declaratory Ruling and Possible Ways to Streamline Deployment Of Small Cell Infrastructure (FCC 2016 Notice)*, WT Docket No. 16-421, DA 16-1427, December 22, 2016, at p. 2; 47 U.S.C. §§253, 332(c)(7), and 1455(a).

²¹ *Id.* at p. 5, citing 47 U.S.C. §§253(c) and 332(c)(7)(A).

²² *Id.* at p. 2

²³ Under 47 U.S.C. 332(c)(7), “personal wireless services” are defined as “commercial mobile services, unlicensed wireless services, and common carrier wireless exchange access services.”

²⁴ *FCC 2016 Notice* at p. 10, citing 47 U.S.C. §§253(a) and 332(c)(7).

²⁵ *Id.*

Further, federal law provides that state and local governments may manage the public rights-of-way and may require fair and reasonable compensation from telecommunications providers for use of those rights-of-way on a nondiscriminatory basis.²⁶ The FCC has not interpreted this provision, and federal circuit courts have varied on the issue of what constitutes “fair and reasonable” compensation.²⁷

In December 2016, in response to a petition for declaratory ruling, the FCC issued a public notice seeking comment on streamlining the deployment of small cell infrastructure by improving wireless facilities siting policies.²⁸ In its notice, the FCC summarized the issues:

To satisfy consumers’ rapidly growing demand for wireless broadband and other services, wireless companies are actively expanding the network capacity needed to maintain and improve the quality of existing services and to support the introduction of new technologies and services. In particular, many wireless providers are deploying small cells and distributed antenna systems (DAS) to meet localized needs for coverage and increased capacity in outdoor and indoor environments. Although the facilities used in these networks are smaller and less obtrusive than traditional cell towers and antennas, they must be deployed more densely – i.e., in many more locations – to function effectively. As a result, local land-use authorities in many areas are facing substantial increases in the volume of siting applications for deployment of these facilities. This trend in infrastructure deployment is expected to continue, and even accelerate, as wireless providers begin rolling out 5G services.

This creates a dilemma. We recognize, as did Congress in enacting Sections 253 and 332 of the Communications Act, that localities play an important role in preserving local interests such as aesthetics and safety. At the same time, the Commission has a statutory mandate to facilitate the deployment of network facilities needed to deliver more robust wireless services to consumers throughout the United States. It is our responsibility to ensure that this deployment of network facilities does not become subject to delay caused by unnecessarily time-consuming and costly siting review processes that may be in conflict with the Communications Act.

The stated purpose of the FCC’s request for comments is to develop a factual record to assess whether and to what extent the process of local land-use authorities’ review of siting applications is hindering, or is likely to hinder, the deployment of wireless infrastructure. Among the matters on which the FCC is seeking comment and guidance are questions specifically related to access to state and local government rights-of-way and the fees imposed for such access.²⁹ The FCC indicated that this “data-driven evaluation will make it possible to reach well-supported decisions

²⁶ *Id.* at p. 12, citing 47 U.S.C. §253(c).

²⁷ *Id.* at p. 13.

²⁸ *Id.*

²⁹ *Id.* at pp. 8-14.

on which further Commission actions, if any, would most effectively address any problem, while preserving local authorities' ability to protect interests within their purview.”³⁰

Deployment of Small Wireless Facilities in Florida

Wireless service providers and wireless infrastructure providers have begun the deployment of small cell wireless infrastructure in various jurisdictions within Florida. These providers indicate that their efforts have been hampered to varying degrees by some local governments that have imposed conditions or moratoria on the siting of small cell facilities.³¹ In general, these moratoria indicate that they are temporary measures designed to allow the local government to review their standards, regulations, and requirements related to siting of wireless communications facilities to address small cell facilities.³² In one instance, the municipality has renewed its moratoria on multiple occasions, extending its effect from the original six months to over 30 months.³³

The Florida Fair Housing Act/Housing for Older Persons

The Florida Fair Housing Act (FFHA)³⁴ is modeled after the Federal Fair Housing Act.³⁵ The FFHA prohibits a person from refusing to sell or rent, or otherwise make unavailable a dwelling to any person because of race, color, national origin, sex, handicap, familial status, or religion.³⁶ The Florida Commission on Human Relations (FCHR) is the state agency established to enforce Florida's anti-discrimination laws.³⁷

There are several exemptions to the FFHA, including “housing for older persons.” Section 760.29(4)(a), F.S., exempts “housing for older persons” from the anti-discrimination provisions of the act relating to familial status.

Section 760.29(4)(b), F.S., provides, in part, that the term “housing for older persons” means housing:

1. Provided under any state or federal program that the commission (FCHR) determines is specifically designed and operated to assist elderly persons, as defined in the state or federal program;
2. Intended for, and solely occupied by, persons 62 years of age or older; or
3. Intended and operated for occupancy by persons 55 years of age or older that meets the following requirements:
 - a. At least 80 percent of the occupied units are occupied by at least one person 55 years of age or older.
 - b. The housing facility or community publishes and adheres to policies and procedures that demonstrate the intent required under this subparagraph.

³⁰ *Id.* at p. 2.

³¹ Several municipalities and counties have adopted moratoria, including the City of Fort Lauderdale, the City of Tallahassee, and Pinellas County.

³² *See, e.g.,* City of Tallahassee, Resolution No. 16-R-42, December 2016.

³³ City of Fort Lauderdale, Resolution No. 17-30, February 21, 2017.

³⁴ Part II of Chapter 760, F.S., is the Florida Fair Housing Act.

³⁵ 42 U.S.C. s. 3601 *et seq.*

³⁶ Section 760.23(1), F.S.

³⁷ *See* ss. 760.01–760.11, F.S., and ss. 760.20–760.37, F.S.

c. The housing facility or community complies with rules made by the Secretary of the United States Department of Housing and Urban Development pursuant to 24 C.F.R. part 100 for verification of occupancy.

A facility or community claiming a “housing for older persons” exemption from the FFHA is required to register with the FCHR by sending a letter to the Commission stating that the facility or community is in compliance with the applicable requirements.³⁸ Failure to comply with the registration requirement does not disqualify a facility or community that otherwise qualifies for the exemption.³⁹

III. Effect of Proposed Changes:

The bill creates the Advanced Wireless Infrastructure Deployment Act, a new subsection s. 337.401(7), F.S.

Definitions

The bill creates definitions, including the following related to wireless entities:

- An “applicant” is a person who submits an application and is a wireless provider.
- An “application” is a request submitted by an applicant to an authority for a permit to collocate small wireless facilities.
- A “wireless provider” is a wireless services provider or a wireless infrastructure provider.
- A “wireless services provider” is a person who provides wireless services.
- “Wireless services” are any services provided using licensed or unlicensed spectrum, whether at a fixed location or mobile, using wireless facilities.
- A “wireless infrastructure provider” is a person certificated to provide telecommunications service in the state and who builds or installs wireless communication transmission equipment, wireless facilities, or wireless support structures, but is not a wireless services provider.

The bill defines four types of wireless infrastructure:

- A “wireless facility” is equipment at a fixed location which enables wireless communications between user equipment and a communications network, including radio transceivers, antennas, wires, coaxial or fiber optic cable or other cables, regular and backup power supplies, and comparable equipment, regardless of technological configuration, and equipment associated with wireless communications. The term includes small wireless facilities. The term does not include:
 - The structure or improvements on, under, within, or adjacent to the structure on which the equipment is collocated;
 - Wireline backhaul facilities; or
 - Coaxial or fiber-optic cable that is between wireless structures or utility poles or that is otherwise not immediately adjacent to or directly associated with a particular antenna.
- A “small wireless facility” is a wireless facility that meets both the following qualifications:

³⁸ Section 760.29(4)(e), F.S.

³⁹ *Id.*

- Each antenna associated with the facility is located inside an enclosure of no more than six cubic feet in volume or, in the case of antennas that have exposed elements, each antenna and all of its exposed elements could fit within an enclosure of no more than six cubic feet in volume; and
- All other wireless equipment associated with the facility is cumulatively no more than 28 cubic feet in volume. The following types of associated ancillary equipment are not included in the calculation of equipment volume: electric meters, concealment elements, telecommunications demarcation boxes, ground-based enclosures, grounding equipment, power transfer switches, cut-off switches, vertical cable runs for the connection of power and other services, and utility poles or other support structures.
- A “micro wireless facility” is a small wireless facility having dimensions no larger than 24 inches in length, 15 inches in width, and 12 inches in height and that has an exterior antenna, if any, no longer than 11 inches.
- An “antenna” is communications equipment that transmits or receives electromagnetic radio frequency signals used in providing wireless services.

The bill defines three types of structures on which an applicant may seek to locate infrastructure:

- An “authority utility pole” is a utility pole owned by an authority in the right-of-way. The term does not include a utility pole owned by a municipal electric utility, any utility pole used to support municipally owned or operated electric distribution facilities, or a utility pole located in the right-of-way within a retirement community that:
 - Is deed-restricted as housing for older persons as defined in s. 760.29(4)(b), F.S.;
 - Has more than 5,000 residents; and
 - Has underground utilities for electric transmission or distribution.
- A “utility pole” is a pole or similar structure that is used in whole or in part to provide communications services or for electric distribution, lighting, traffic control, signage, or a similar function.
- A “wireless support structure” is a freestanding structure, such as a monopole, a guyed or self-supporting tower, a billboard, or another existing or proposed structure designed to support or capable of supporting wireless facilities. The term does not include a utility pole.

The bill also creates the following definitions:

- “Applicable codes” means uniform building, fire, electrical, plumbing, or mechanical codes adopted by a recognized national code organization, or local amendments to those codes, enacted solely to address threats of destruction of property or injury to persons. The term also includes local government historic preservation zoning regulations consistent with the preservation of local zoning authority under 47 U.S.C s. 332(c)(7), the requirements for facility modifications under 47 U.S.C. s. 1455(a), or the National Historic Preservation Act of 1966, as amended, and the regulations adopted to implement these laws.
- “Authority” means a county or municipality having jurisdiction and control of the rights-of-way of any public road. The term does not include the DOT, and its rights-of-way are excluded from the bill.
- “Collocate” or “collocation” means to install, mount, maintain, modify, operate, or replace one or more wireless facilities on, under, within, or adjacent to a wireless support structure or utility pole.
- “FCC” means the Federal Communications Commission.

Application

The process necessarily begins with an application; however, the bill does not expressly authorize an authority to develop a form or to require that an applicant provide specific information, although it does contain statements that *imply* some level of authorization. For example, it prohibits an authority from requiring an applicant to provide more information to obtain a permit than is required of electric service providers and other communications service providers that are not wireless service providers.⁴⁰ A proponent has argued that this prohibition against requiring more information *indirectly authorizes* an authority to require an applicant to provide the same information as the listed providers. The bill also makes numerous references to a “complete” application. An application cannot be determined to be complete or incomplete without some standard by which to judge, which presumably would be set forth in requirements for the application and permit. However, this, too, is implied or indirect authority.

It *appears* that the application process is for small wireless facilities only, although the bill defines three other types of infrastructure:

- When the bill mentions infrastructure in substantive provisions, it is usually small wireless facilities, and the definition of “application” is a request submitted by an applicant to an authority for a permit to collocate small wireless facilities.⁴¹
- However, it is possible that an application could be for installation of a micro wireless facility. A micro wireless facility is a type of small wireless facility, so it could be included in the substantive provisions on small wireless facilities. Additionally, the only use of the term micro wireless facility is in a prohibition against authorities requiring approval or fees for specified activities involving micro wireless facilities,⁴² which does not necessarily rule out an application for other uses of these facilities.
- The term antenna is used most often in defining the components of other infrastructure and is used only once in a substantive provision, which prohibits an authority from requiring placement of multiple antenna systems on a single utility pole.⁴³
- The bill only used the term “wireless facility” in defining “small wireless facility.”

The bill requires wireless infrastructure providers include an attestation in their application to an authority that small wireless facilities will be collocated on the utility pole or structure and small wireless facilities will be used by a wireless services provider to provide service within 9 months after the application is granted. The authority must accept and process the application in accordance with the bill and any applicable local codes governing the placement of utility poles in the public right-of-way.

Application Review and Approval

The bill establishes the following process and time requirements for the application review and approval:

⁴⁰ Section 337.401(7)(d)2., F.S., as proposed by CS/CS/SB 596.

⁴¹ Definitions are not substantive law, so this only provides some level of guidance in interpreting the substantive provisions.

⁴² Section 337.401(7)(e)3., F.S., as proposed by CS/CS/SB 596.

⁴³ Section 337.401(7)(d)3., F.S., as proposed by CS/CS/SB 596.

- The authority must determine whether the application is complete⁴⁴ and notify the applicant by electronic mail within 10 days after receiving an application.⁴⁵ If an authority deems an application incomplete, the authority must specifically identify the missing information. The application is deemed complete when the applicant submits all documents, information, and fees specifically enumerated in the authority's permit application form or if the authority fails to provide notification to the applicant within 10 days.⁴⁶
- If the authority fails to approve or deny a complete application within 60 days after receipt of the application, the application is deemed approved.⁴⁷
- The authority must notify the applicant of approval or denial by electronic mail. The bill requires an authority to approve a complete application unless it does not meet the authority's applicable codes.⁴⁸ If the authority denies the application, the authority must specify in writing the basis for denial, including the specific code provisions on which the denial was based, and send the documentation to the applicant by electronic mail on the day the authority denies the application. The applicant then has 30 days after notice of the denial is sent to the applicant to cure the identified deficiencies and resubmit the application. The authority then must approve or deny the revised application within 30 days after receipt or the application will be deemed approved. Any subsequent review is limited to the deficiencies cited in the denial.⁴⁹
- An applicant seeking to collocate small wireless facilities within the jurisdiction of a single authority may, at the applicant's discretion, file a consolidated application and receive a single permit for the collocation of multiple small wireless facilities.⁵⁰ Presumably, the above time limit requirements apply to such a consolidated application.

In reviewing an application, the authority must process applications on a nondiscriminatory basis.⁵¹ The bill prohibits the authority from doing the following:

- Directly or indirectly requiring an applicant to perform services unrelated to the collocation for which approval is sought, such as in-kind contributions to the authority, including reserving fiber, conduit, or pole space for the authority;⁵²
- Requiring an applicant to provide more information to obtain a permit than is required of electric service providers and other communications service providers that are not wireless service providers;⁵³

⁴⁴ The bill does not authorize authorities to establish requirements or standards by which completeness of an application may be determined.

⁴⁵ Ten days may be an inadequate time for a local government to make the engineering determination that a proposed location, installation, and resulting wind load comply with applicable codes.

⁴⁶ Section 337.401(7)(d)5., F.S., as proposed by CS/CS/SB 596.

⁴⁷ Section 337.401(7)(d)6., F.S., as proposed by CS/CS/SB 596.

⁴⁸ The term "applicable codes" is defined to include "uniform building, fire, electrical, plumbing, or mechanical codes adopted by a recognized national code organization, or local amendments to those codes, enacted solely to address threats of destruction of property or injury to persons." This excludes consideration and application of zoning, land use, and aesthetic ordinances and of any other source of public safety protections.

⁴⁹ Section 337.401(7)(d)7., F.S., as proposed by CS/CS/SB 596.

⁵⁰ Section 337.401(7)(d)8., F.S., as proposed by CS/CS/SB 596.

⁵¹ Section 337.401(7)(d)6., F.S., as proposed by CS/CS/SB 596.

⁵² Section 337.401(7)(d)1., F.S., as proposed by CS/CS/SB 596.

⁵³ Section 337.401(7)(d)2., F.S., as proposed by CS/CS/SB 596.

- Requiring the placement of small wireless facilities on any specific utility pole or category of poles or requiring multiple antenna systems on a single utility pole;⁵⁴
- Limit the placement of small wireless facilities by minimum separation distances or a maximum height limitation; however, an authority may limit the height of a small wireless facility to no more than 10 feet above the tallest existing utility pole, measured from grade in place within 500 feet of the proposed location of the small wireless facility. If there is no utility pole within 500 feet, the authority may limit the height of the small wireless facility to no more than 60 feet. The height limitations do not apply to the placement of any small wireless facility on a utility pole or wireless support structure constructed on or before June 30, 2017, if the small wireless facility does not extend more than 10 feet above the structure.⁵⁵ and
- Enter into an exclusive arrangement with any person for the right to attach equipment to authority utility poles.⁵⁶

The bill prohibits requiring either approval or fees for:

- Routine maintenance;
- Replacement of existing wireless facilities with wireless facilities that are substantially similar or the same size or smaller; or
- Installation, placement, maintenance, or replacement of micro wireless facilities that are suspended on cables strung between existing utility poles in compliance with applicable codes by a communications service provider authorized to occupy the rights-of-way and who is remitting taxes under chapter 202, F.S.⁵⁷

Fees

The bill addresses two types of fees. The first is an application or permit fee. The bill provides that an authority may charge a permit fee only in accordance with existing subsection (3) on fees for access to rights-of-way.⁵⁸ That subsection allows local governments to choose whether to charge permit fees. The local government can choose to require and collect permit fees from any providers of communications services that use or occupy municipal or county roads or rights-of-way, in which case the rate of the local communications services tax imposed by such jurisdiction, as computed under s. 202.20, F.S., shall automatically be reduced by a rate of 0.12 percent. Alternatively, the local government can elect not to require and collect permit fees in which case the rate for the local communications services tax as computed under s. 202.20, F.S., for that jurisdiction may be increased by ordinance or resolution by an amount not to exceed a rate of 0.12 percent.

The second type of fee is a pole attachment fee, or collocation fee, which includes any costs of make-ready work.⁵⁹ The rates and fees for collocations on authority utility poles must be

⁵⁴ Section 337.401(7)(d)3., F.S., as proposed by CS/CS/SB 596.

⁵⁵ Section 337.401(7)(d)4., F.S., as proposed by CS/CS/SB 596.

⁵⁶ Section 337.401(7)(f)1., F.S., as proposed by CS/CS/SB 596.

⁵⁷ Section 337.401(7)(e), F.S., as proposed by CS/CS/SB 596.

⁵⁸ Section 337.401(7)(d), F.S., as proposed by CS/CS/SB 596.

⁵⁹ “Make-ready” generally refers to the modification of poles or lines or the installation of guys and anchors to accommodate additional facilities. Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, CC

nondiscriminatory, regardless of the services provided by the collocating person. The rate to collocate equipment on authority utility poles may not exceed the lesser of the annual recurring rate that would be permitted under rules adopted by the FCC under 47 U.S.C. s. 224(d) if the collocation rate were regulated by the FCC or \$15 per year per authority utility pole.⁶⁰

If the authority has an existing pole attachment rate, fee, or other term that does not comply with this subsection, the authority must, no later than January 1, 2018, revise the rate, fee, or term to comply with this subsection.

Persons owning or controlling authority utility poles must offer rates, fees, and other terms that comply with this subsection. By the later of January 1, 2018, or 3 months after receiving a request to collocate its first small wireless facility on a utility pole owned or controlled by an authority, the person owning or controlling the authority utility pole must make available, through ordinance or otherwise, rates, fees, and terms for the collocation of small wireless facilities on the authority utility pole which comply with this subsection.

The rates, fees, and terms must be nondiscriminatory, competitively neutral, and commercially reasonable and must comply with this subsection.

The bill provides procedures and timelines for make-ready work:

- If the authority utility pole supports aerial facilities used to provide communications services or electric service, the parties must comply with the process for make-ready work under 47 U.S.C. s. 224⁶¹ and implementing regulations.⁶² The good faith estimate of the person

Docket Nos. 96-98, 95-185, Order on Reconsideration, 14 FCC Rcd 18049, 18056 n.50 (1999) (Local Competition Reconsideration Order). https://apps.fcc.gov/edocs_public/attachmatch/FCC-11-50A1.pdf (Last accessed March 2, 2017).

⁶⁰ Section 337.401(7)(f)3., F.S., as proposed by CS/CS/SB 596.

⁶¹ Under this law, a rate is just and reasonable if it assures a utility the recovery of not less than the additional costs of providing pole attachments, nor more than an amount determined by multiplying the percentage of the total usable space, or the percentage of the total duct or conduit capacity, which is occupied by the pole attachment by the sum of the operating expenses and actual capital costs of the utility attributable to the entire pole, duct, conduit, or right-of-way.

<https://www.law.cornell.edu/uscode/text/47/224> (Last accessed March 2, 2017.)

⁶² A utility that has received a complete application for pole attachment from a cable operator or telecommunications carrier must respond within 45 days of receipt of the application (or within 60 days, in the case of larger orders, defined as orders up to the lesser of 3000 poles or 5 percent of the utility's poles in a state). This response may be a notification that the utility has completed a survey of poles for which access has been requested. A complete application is an application that provides the utility with the information necessary under its procedures to begin to survey the poles. If the request for attachment is not denied, the utility must present an estimate of charges to perform all necessary make-ready work within 14 days of providing the response. A utility may withdraw an outstanding estimate of charges to perform make-ready work within 14 days after the estimate is presented. A cable operator or telecommunications carrier may accept a valid estimate and make payment any time after receipt of an estimate but before the estimate is withdrawn.

Upon receipt of payment of the estimate, the utility must immediately provide written notice to all known entities with existing attachments that may be affected by the make-ready:

- For attachments in the communications space, the utility must complete all make-ready work no later than 60 days after notification is sent (or 105 days in the case of larger orders). If the utility has not completed the make-ready work by within this time, the cable operator or telecommunications carrier requesting access may complete the specified make-ready.
- For wireless attachments above the communications space, the utility must complete all make-ready work no later than 90 days after notification is sent (or 135 days in the case of larger orders). The utility must complete the make-ready work by this date.

A utility may deviate from the time limits specified in this section:

owning or controlling the pole for any make-ready work necessary to enable the pole to support the requested collocation must include pole replacement if necessary.

- If the authority utility pole does not support aerial facilities used to provide communications services or electric service, the authority must provide a good faith estimate for any make-ready work necessary to enable the pole to support the requested collocation, including necessary pole replacement, within 60 days after receipt of a complete application. Make-ready work, including any pole replacement, must be completed within 60 days after written acceptance of the good faith estimate by the applicant.
- The authority may not require more make-ready work than is required to meet applicable codes or industry standards. Fees for make-ready work may not include costs related to preexisting damage or prior noncompliance. Fees for make-ready work, including any pole replacement, may not exceed actual costs or the amount charged to communications service providers other than wireless service providers for similar work and may not include any consultant fees or expenses.

For many local government authorities, the technology, pole attachments, and siting process contemplated in the bill are relatively new, and it may take time and experience to determine what is necessary to support the wireless infrastructure safely. Consequently, initial implementation of the bill may require consultants to obtain reasonable assurances of public safety. However, the bill prohibits recovery of any consultant fees or expenses.⁶³

The bill provides that it does not authorize a person to collocate small wireless facilities on a privately owned utility pole, a utility pole owned by an electric cooperative or by a municipal electric utility, a privately owned wireless support structure, or other private property without the consent of the property owner.

The bill further provides that it does not authorize a person to collocate or attach small wireless facilities or micro wireless facilities on a utility pole or erect a wireless support structure in the right-of-way located within a retirement community that:

- Is deed-restricted as housing for older persons as defined in s. 760.29(4)(b), F.S.;
- Has more than 5,000 residents; and
- Has underground utilities for electric transmission or distribution.

The bill provides that the new subsection may not be construed to limit local governments' authority to enforce historic preservation zoning regulations consistent with the preservation of local zoning authority under 47 U.S.C s. 332(c)(7), the requirements for facility modifications

-
- Before offering an estimate of charges if the parties have no agreement specifying the rates, terms, and conditions of attachment.
 - During performance of make-ready for good and sufficient cause that renders it infeasible for the utility to complete the make-ready work within the prescribed time frame. A utility that so deviates shall immediately notify, in writing, the cable operator or telecommunications carrier requesting attachment and other affected entities with existing attachments, and shall include the reason for and date and duration of the deviation. The utility shall deviate from the time limits specified in this section for a period no longer than necessary and shall resume make-ready performance without discrimination when it returns to routine operations.

47 CFR § 1.1420 - Timeline for access to utility poles. <https://www.law.cornell.edu/cfr/text/47/1.1420> (Last accessed March 2, 2017).

⁶³ Section 337.401(7)(f)5.d., F.S., as proposed by CS/CS/SB 596.

under 47 U.S.C. s.1455(a), or the National Historic Preservation Act of 1966, as amended, and the regulations adopted to implement these laws.

The bill takes effect July 1, 2017.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

Subsection (b) of section 18, Article VII of the Florida Constitution, provides that except upon the approval of each house of the Legislature by a two-thirds vote of the membership, the Legislature may not enact, amend, or repeal any general law if the anticipated effect of doing so would be to reduce the authority that municipalities or counties have to raise revenue in the aggregate, as such authority existed on February 1, 1989. However, the mandate requirements do not apply to laws having an insignificant impact, which for Fiscal Year 2016-2017 was \$2 million or less.^{64,65,66}

The county/municipality mandates provision of section 18, Article VII of the Florida Constitution, may apply because this bill prohibits governmental entities with authority over public roads and rights-of-way from recovering any consultant fees or expenses relating to preparing a pole for use by a wireless provider. Given the novelty of the infrastructure, pole attachments, and potential risks of liability, local government authorities may need to make frequent use of consultants to ensure public safety, and the bill prohibits recovery of these consultant costs. The Revenue Estimating Conference has not examined the fiscal impact of this bill, however, the bill's impact may exceed the \$2 million threshold.

The bill does not appear to qualify under any exemption or exception. If the bill does qualify as a mandate, final passage must be approved by two-thirds of the membership of each house of the Legislature.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

⁶⁴ FLA. CONST. art. VII, s. 18(d).

⁶⁵ An insignificant fiscal impact is the amount not greater than the average statewide population for the applicable fiscal year times \$0.10. See Florida Senate Committee on Community Affairs, *Interim Report 2012-115: Insignificant Impact*, (Sept. 2011), available at <http://www.flsenate.gov/PublishedContent/Session/2012/InterimReports/2012-115ca.pdf> (last visited Feb. 13, 2017).

⁶⁶ Based on the Demographic Estimating Conference's population adopted on November 1, 2016. The conference packet is available at <http://edr.state.fl.us/Content/conferences/population/ConferenceResults.pdf> (last visited Feb. 13, 2017).

V. Fiscal Impact Statement:**A. Tax/Fee Issues:**

According to information provided by opponents of the bill, currently the amount of the pole attachment fee is subject only to market forces, and some authorities are charging considerable more than the bill's maximum of \$15.00 dollars per attachment per year; the Jacksonville Electric Authority's Small Cell Site Rental Schedule, for example, shows a charge of \$1,236.00 per year for each small cell site.

B. Private Sector Impact:

Wireless providers should be able to provide better service to customers.

C. Government Sector Impact:

Authorities may have difficulty and expenses in early implementation as the technology and installations involved are new uses of rights-of-way and the process includes engineering determinations of wind load, structural integrity, and safety.

VI. Technical Deficiencies:

None.

VII. Related Issues:

The bill does not address any responsibility or liability of wireless providers relating to potential personal injury or property damage.

VIII. Statutes Affected:

This bill substantially amends section 337.401 of the Florida Statutes.

IX. Additional Information:**A. Committee Substitute – Statement of Substantial Changes:**

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS/CS by Governmental Oversight and Accountability on March 27, 2017:

- Defines “authority” as a county or municipality having jurisdiction and control of the rights-of-way of any public road. This term does not include the DOT and that agency’s rights-of-way are excluded from the bill;
- Amends the definition of “authority utility pole” to provide that this term does not include a utility pole owned by a municipal electric utility, any utility pole used to support municipally owned or operated electric distribution facilities, or a utility pole located in the right-of-way of a retirement community that:
 - Is deed-restricted as housing for older persons as defined by s. 760.29(4)(b). F.S.;
 - Has more than 5,000 residents; and
 - Has underground utilities for electric distribution or transmission;

- Requires wireless infrastructure providers include an attestation in their application to an authority regarding the time-frame of collocating small wireless facilities on utility poles or structures and provision of services;
- Provides that an authority must accept and process the application for collocating small wireless facilities on utility poles or structures in accordance with the bill and any applicable local codes governing the placement of utility poles in the public right-of-way
- Provides that a person is not authorized to collocate small wireless facilities on a utility pole owned by a municipal electric utility;
- Provides that a person is not authorized to collocate or attach small wireless facilities or micro wireless facilities on a utility pole or erect a wireless support structure in the right-of-way located within a retirement community that:
 - Is deed-restricted as housing for older persons as defined by s. 760.29(4)(b), F.S.;
 - Has more than 5,000 residents; and
 - Has underground utilities for electric distribution or transmission.

CS by Communications, Energy, and Public Utilities on March 7, 2017:

- Amends the definition of “applicable codes” to include qualifying local government historic preservation zoning regulations;
- Amends the definition of “authority utility pole” to exclude a utility pole owned by a municipal electric company;
- Excludes from the definition of “wireless facility” wireline backhaul facilities and coaxial or fiber-optic cable that is between wireless structures or utility poles or that is otherwise not immediately adjacent to or directly associated with a particular antenna;
- Makes the prohibition against an authority requiring approval or fees relating to micro wireless facilities that are suspended applicable to facilities suspended from any type of cable, not just “messenger” cables;
- Provides that the new subsection does not authorize collocation of small wireless facilities on a utility pole owned by an electric cooperative; and
- Provides that the new subsection may not be construed to limit local government’s authority to qualifying enforce historic preservation zoning regulations.

B. Amendments:

None.

EXHIBIT

9



Florida Department of Transportation

**RICK SCOTT
GOVERNOR**

605 Suwannee Street
Tallahassee, FL 32399-0450

**RACHEL D. CONE
INTERIM SECRETARY**

April 20, 2017

Mr. Alexander I. Gellman
Chief Executive Officer
Vertical Bridge Holdings LLC
750 Park of Commerce Drive Suite 200
Boca Raton, Florida 33487

Re: RowStar Leases for Commercial Wireless Telecommunication
Facilities with the Department

Dear Mr. Gellman:

I appreciate the time you and your staff took to come to Tallahassee and meet with the Florida Department of Transportation (Department). As you know, in 2014 and 2016 RowStar, LLC (RowStar) competitively procured two separate leases of Department right of way for the installation and operation of commercial telecommunications facilities. The Department understands that on February 23, 2017, Vertical Bridge NTCF, LLC, obtained all outstanding membership interests in RowStar. My staff and I have enjoyed working with RowStar during the past three years to help administer the leases, and we look forward to continuing to work with Celynda Redgrave and your RowStar staff into the future.

In drafting and negotiating the terms of the second lease, RowStar and the Department agreed to terms that were slightly different from the terms of the first lease. These changes were made primarily to improve and expand provisions relating to the processing of site specific leases, which was based in part on our experiences with implementation of the 2014 lease. It would benefit both parties to amend the first lease to make its terms consistent with those of the second lease. The Department will soon send you a proposed amendment of the first lease that is consistent with the foregoing.

As we discussed in early 2017, Crown Castle filed a rule challenge to the implementation of our Utility Accommodation Manual. In addition, the Department discussed with you Senate Bill 596 that is currently pending in the Florida Legislature, which, if passed, could alter current law regarding wireless facilities in several ways, including classifying wireless facilities as utilities for purposes of utility permitting within the Department's right of way.

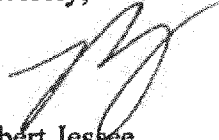
Passage of SB 596 or an adverse determination in the rule challenge would require the Department to begin permitting wireless facilities that wish to locate in Department right-of-way.

Mr. Alexander Gellman
Page 2
April 20, 2017

Because this would have direct implications for the RowStar leases, I encourage you to promptly identify and pursue all available locations you would like to secure under the existing RowStar leases. If the legislation passes, or the Department loses the rule challenge, the Department would tentatively propose issuing RowStar permits for all sites it has identified and obtained through its leases, with the understanding that no rent or other compensation would be due (we would want to accomplish this in connection with an agreement to terminate the leases — expecting that is what you would also want, if locations are available by permit without any requirement for compensation to the Department). My staff and I are available to help implement and pursue your requests.

Thank you again for your time, and we look forward to working with you on all other matters of the two lease agreements.

Sincerely,

A handwritten signature in black ink, appearing to read 'RJ' or similar initials, written over a light gray circular background.

Robert Jesse
Deputy Director, Right of Way Operations

cc: Ms. Laurie Pizzo
Mr. Matt Childs

EXHIBIT

10



750 Park of Commerce Drive, Suite 200 Boca Raton, FL 33487 | 561-948-6367

May 8, 2017

BY E-MAIL AND FED EX

To: Matthew Childs, Esq., Assistant General Counsel
Florida Department of Transportation
605 Suwannee Street
Tallahassee, FL 32399
Matthew.Childs@dot.state.fl.us

RE: Rowstar 2014 and 2016 Leases for Commercial Wireless Telecommunication Facilities
(the "Leases") with the Department of Transportation (the "Department")

Dear Matt:

We are in receipt of the letter dated April 20, 2017 from the Deputy Director, Right of Way Operations, Robert Jessee to the Chief Executive Officer of Vertical Bridge Holdings, LLC, Alex Gellman (the "DOT Letter"). We, too, appreciate the time the Department staff took meeting with us in Tallahassee, and we await the proposed amendment to the 2014 Lease as mentioned in the DOT Letter.

With respect to the remainder of the DOT Letter, we were surprised by the unexpected position taken by the Department regarding the effect of the passage of SB 596/HB687 (the "Advanced Wireless Infrastructure Deployment Act" or "AWIDA") or any adverse determination in the administrative proceeding styled Crown Castle NG East LLC v. Department of Transportation, Consolidated Case Nos. 17-0108RP, 17-0621, and 17-0622 (the "Crown Castle Action"). The DOT Letter appears to take the position that either the passage of AWIDA or an adverse ruling in the Crown Castle Action "would require the Department to begin permitting wireless facilities that wish to locate in the Department right-of-way", as set forth in the DOT Letter.

While we value our strong working relationship with the Department and hope to continue to work together to benefit the State of Florida, we feel obligated to inform you of our strong disagreement with the above-mentioned proposition. Rowstar's primary interest is in maintaining the exclusive lease structure awarded to it by the Department, which benefits the Department and the citizens of the State of Florida by generating revenue from the lease of the Department's rights-of-way. Vertical Bridge NTCF, LLC ("Vertical Bridge"), having acquired Rowstar at substantial cost (as previously identified to you), can take no other position than to strongly defend the value of the assets acquired. Of course, protecting the relationship established by the Leases, which were negotiated and awarded after years of competitive

processes, also strongly benefits the Department and the citizens of the State of Florida by ensuring a substantial revenue stream to fund capital transportation needs as contemplated by the enabling statutory provisions.

Thus, we would hope and expect the Department to vigorously defend the Leases in the Crown Castle Action as it has thus far, on the basis of the following considerations, among others:

I. Passage of AWIDA

Passage of AWIDA as an amendment to Florida Statutes, Section 337.401 would not in any way alter the obligations of the Department as they currently exist for a number of reasons.

1) The Department is expressly carved out from the applicability of the new subsection (7).

First, as codified in Section 337.401(7)(b)(5), AWIDA specifically excludes the Department and its rights-of-way from the definition of "Authority" used throughout the remainder of AWIDA, rendering inapplicable to the Department any of the other provisions of AWIDA codified in new subsection (7). In particular, Subsection (7)(b)(5) states:

"Authority" means a county or municipality having jurisdiction and control of the rights-of-way of any public road. The term does not include the Department of Transportation. Rights-of-way under the jurisdiction and control of the department are excluded from this subsection.

(Emphasis added.)

The operative provisions of new Subsection (7) are expressly applicable to actions by an "authority," and not to the Department. *E.g.*, AWIDA at § 337.401(7)(c) ("Except as provided in this subsection, **an authority may not** prohibit, regulate, or charge for the collocation of small wireless facilities in the public rights-of-way."); § 337.401(7)(d) ("**An authority may require** a registration process and permit fees in accordance with subsection (3). **An authority shall accept** applications for permits . . ."); § 337.401(7)(e) ("**An authority may not** require approval or require fees or other charges for . . ."); § 337.401(7)(f) ("Collocation of small wireless facilities **on authority utility poles** is subject to the following requirements . . .").

In passing AWIDA, the Legislature could not have been more clear or unambiguous in excluding the Department from the provisions of Subsection (7) or in exempting the Department's rights-of-way. If AWIDA becomes law, this exemption must be given effect to carry out the intent of the Legislature as expressed in the statutory language itself.

2) **The term “wireless facilities” specifically excludes cell towers and the structures on which wireless equipment is installed.**

Second, AWIDA’s amendments to Section 337.401(1)(a) add certain terms to the series of items for which the Department is “authorized to prescribe and enforce reasonable rules or regulations with reference to the placing and maintaining across, on, or within the right-of-way” under the Department’s jurisdiction, but none of those terms brings the construction of commercial cell towers within its scope. Section 337.401 currently extends to “any electric transmission, telephone, telegraph, or other communications services lines” among other enumerated items. The AWIDA amendment replaces the term “telephone” with the terms “voice” and “data” in the series modifying the phrase “communications services lines,” and also adds, as a separate category, the phrase “wireless facilities.”

However, the addition of these terms does not in any manner affect the construction of cell towers as governed by the Leases. Cell towers are neither “communications services lines,” nor are they “wireless facilities.” The concept of “communications services lines,” inherently refers to wired as opposed to wireless communications, hence the inclusion of the phrase “wireless facilities” as a separate item in the series (and not as a modifier of “communications services lines”). But the phrase, “wireless facilities,” is expressly defined in AWIDA and excludes structures such as cell towers:

“Wireless facility” means equipment at a fixed location which enables wireless communications between user equipment and a communications network, including radio transceivers, antennas, wires, coaxial or fiber-optic cable or other cables, regular and backup power supplies, and comparable equipment, regardless of technological configuration, and equipment associated with wireless communications. The term includes small wireless facilities. **The term does not include:**

a. The structure or improvements on, under, within, or adjacent to the structure on which the equipment is collocated;

b. Wireline backhaul facilities; or

c. Coaxial or fiber-optic cable that is between wireless structures or utility poles or that is otherwise not immediately adjacent to or directly associated with a particular antenna.

AWIDA, § 337.401(7)(b)(12) (emphasis added). Because cell towers are “structures or improvements . . . on which the equipment is collocated,” they are not within the scope of Section 337.401(1)(a).

Importantly, the amendment to Section 337.401(1)(a) could have, but **does not**, include the phrases “wireless support structure” or “wireless communications facility,” both of which would have included cell towers within their definition.

A “wireless support structure” is defined in AWIDA Section 337.401(7)(b)(15) as “**a freestanding structure**, such as a monopole, a guyed or **self-supporting tower**, or another existing or proposed structure **designed to support or capable of supporting wireless facilities**. The term does not include a utility pole.” Similarly, a “wireless communications facility” is already defined in existing law as “any equipment or facility used to provide service and may include, but is not limited to, antennae, towers, equipment enclosures, cabling, antenna brackets, and other such equipment.” FLA. STAT., § 365.172(3)(gg) (2016). Had the Legislature intended to include cell towers within the scope of Section 337.041(1)(a), the language was available using either of those phrases under both existing law and the amendment itself. Instead, the Legislature clearly and unambiguously chose not to include cell towers within Section 337.401(1)(a).

The Legislature’s clearly-expressed intent that wireless facilities do not include cell towers or other structures that solely support wireless communications equipment is consistent with other provisions of the existing statutory scheme. For example, Section 338.235(3) recognizes that wireless facilities are placed “by any **wireless provider of mobile services** as defined in 47 I.S.C. s. 153(27) or s. 332(d), **and any telecommunications company** as defined in s. 364.02” (emphasis added). A “telecommunications company” is defined in 364.02 as “every corporation, partnership, and person and their lessees, trustees, or receivers appointed by any court whatsoever, and every political subdivision in the state, **offering two-way telecommunications service to the public for hire** within this state by the use of a telecommunications facility” (emphasis added). Cell tower owners and developers, like Crown Castle, Rowstar, and Vertical Bridge, are not “wireless providers” or “telecommunications companies” because they do not provide two-way telecommunications service to the public for hire. Rather, they provide infrastructure to the companies that do offer such services to the public. Accordingly, cell towers that are placed by wireless infrastructure providers are not wireless facilities that are placed by telecommunications service providers.

3) **Existing law clearly directs the Department to grant access to rights-of-way for construction of cell towers via revenue-generating leases.**

Section 337.251 expressly authorizes the Department to “lease to public agencies or private entities, for a term not to exceed 99 years, the use of department property, including rights-of-way, for joint public-private transportation purposes to further economic development in this state and generate revenue for transportation.” Moreover, other statutory provisions express a clear statutory directive to the Department to monetize rights-of-way through leases. For example, Section 339.041 (entitled Factoring of Revenues from Leases for Wireless Communication Facilities) expressly states that it is the intent of the Legislature that FDOT generates revenue by

leasing rights to build “wireless communication facilities,” which phrase includes cell towers. See *infra* Part 2, discussing definition at FLA. STAT., § 365.172(3)(gg) (2016)). That section provides, in relevant part:

The Legislature finds that efforts to increase funding for capital expenditures for the transportation system **are necessary** for the protection of the public safety and general welfare and for the preservation of transportation facilities in this state. **Therefore, it is the intent of the Legislature to:**

(a) Create a mechanism for factoring future revenues received by the department from leases for wireless communication facilities on department property on a nonrecourse basis.

FLA. STAT., § 339.041 (2016) (emphasis added).

Similarly, Section 365.172(13)(f) also expressly directs the Department to lease access to rights-of-way for “wireless telecommunications facilities”:

Any other law to the contrary notwithstanding, . . . the Department of Transportation shall negotiate, in the name of the state, **leases for wireless communications facilities** that provide access to property acquired for state rights-of-way. On property acquired for transportation purposes, leases shall be granted in accordance with s. 337.251.

(Emphasis added).

- 4) **Even if “wireless facilities” were found to include cell towers (and improperly deemed utilities), the Department is not obligated to issue utility permits for such wireless facilities (and is in fact mandated to issue leases), and nothing prohibits exclusive arrangements.**

Section 337.401(1)(a) authorizes the Department to **prescribe and enforce** reasonable rules or regulations, but does not **obligate** issuance of utility permits. Likewise, 337.401(2) states that the Department “**may** grant to any person who is a resident of this state, or to any corporation which is organized under the laws of this state or licensed to do business within this state, the use of a right-of-way for the utility in accordance with such rules or regulations as the authority may adopt. No utility shall be installed, located, or relocated unless authorized by a written permit issued by the authority” (emphasis added). Accordingly, the Department is not obligated to grant the use of its rights-of-way to any party that applies as an administrative matter, but rather, has the authority to determine whether or not to grant such use. Moreover, existing and prevailing law requires the Department to enter into leases, comparable to the Leases with Rowstar, for construction of, among other things, cell towers.

Further, nothing prohibits the Department from entering into an exclusive arrangement with a third party, like Rowstar and the Leases, which could involve leases of the rights-of-way and, to the extent wireless facilities are found to be “utilities”, to issue permits for installation to the same party as is granted the lease, parallel with the grant of the leases of rights-of-way. Nowhere under existing or proposed law is the Department prohibited from entering into exclusive arrangements, whether for leases or utility permits, and nowhere has there been any contest of the validity of the exclusive arrangement. To the contrary, the Department is given a mandate to monetize its rights-of-way for cell tower development without limitation as to how to do so, and without prohibition as to exclusive arrangements like the Lodestar or Rowstar agreements, and the Department is given direction that, notwithstanding any other law, cell towers are to be constructed via the issuance of leases and not permits.

Section 339.041 states expressly that the Legislature intends that the Department generate revenue by leasing rights to build wireless communication facilities:

The Legislature finds that efforts to increase funding for capital expenditures for the transportation system are necessary for the protection of the public safety and general welfare and for the preservation of transportation facilities in this state. Therefore, it is the intent of the Legislature to:

(a) Create a mechanism for factoring future revenues received by the department from leases for wireless communication facilities on department property on a nonrecourse basis. (Emphasis added).

Similarly, Section 365.172(13)(f) provides:

Any other law to the contrary notwithstanding, . . . the Department of Transportation shall negotiate, in the name of the state, leases for wireless communications facilities that provide access to property acquired for state rights-of-way. On property acquired for transportation purposes, leases shall be granted in accordance with s. 337.251. (Emphasis added).

II. Adverse Determination in the Crown Castle Rule Challenge

In addition to the foregoing, an adverse determination in the Crown Castle Action does not require the Department to issue utility permits for cell towers or otherwise act inconsistently with the Leases. Should Crown Castle prevail, the Department’s proposed amendments to Rule 14-46.001 published in the December 16, 2016 (Vol. 42 No. 243) issue of the Florida Administrative Register may be invalidated, but this does not require issuance of utility permits to Crown Castle or any other cell tower company. Rather, such invalidation merely restores the state of the legal and regulatory scheme that existed before December 16, 2016, which neither prohibited the Department from entering into the Leases nor required the Department to issue utility permits or

otherwise act inconsistently with the Leases in managing access to its rights-of-way.

We note that Crown Castle itself submitted a competitive bid on February 23, 2016 to the Department for the right to lease the Department's rights-of-way for construction and operation of the commercial telecommunications system. When Crown Castle lost its bid to Rowstar (resulting in Rowstar's 2016 Lease), Crown Castle initially gave notice of its intent to protest such results by a letter dated March 23, 2016, and then waived its right to protest by a letter dated April 5, 2016. Crown Castle's actions in this regard clearly evince Crown Castle's understanding that existing Florida law and Department regulations (prior to promulgation of the challenged amendments to Rule 14-46.001) allow the department to manage access to its rights of way for construction and operation of commercial cell towers exclusively through revenue-generating leases and not through issuance of utility permits.

Finally, to the extent the Department believes any clarification of its regulations is necessary or prudent in the event of an adverse ruling in the Crown Castle Action, we would urge the Department to consider issuing a new proposed rule that is both consistent with any such ruling and clearly articulates the Department's **legitimate and statutorily-mandated** interest in leasing access to its rights-of-way through the Leases, which is in the interest of the citizens of the State of Florida. Pending issuance of any such new proposed rule, we would urge the Department not to issue utility permits as issuance of permits is not required by law.

To date, we have not sought to intervene in the Crown Castle Action because we believed that Rowstar's interests were adequately aligned with the Department's interests. While we still believe there is an inherent alignment of our interests with those of the Department, the DOT Letter causes us some concern. As such, we are preparing to appear as an intervenor in the Crown Castle Action on the Department's side in support of the Department's proposed amendments to Rule 14-46.001. We are also evaluating whether it may be in Rowstar and the Department's mutual interest for Rowstar to initiate its own administrative proceeding and/or court action seeking a ruling on the Department's continued authority to lease access to its rights-of-way to Rowstar and the enforceability of such Leases under applicable law. We look forward to continuing to work cooperatively with the Department to protect the interests of Rowstar, the Department, and the citizens of the State of Florida.

Sincerely,

ROWSTAR, LLC

By:


Daniel Mannheim, SVP and General Counsel

cc: Erik Fenniman, Deputy General Counsel (by e-mail: Erik.Fenniman@dot.state.fl.us)
Adam Ginder, Associate General Counsel (by e-mail: AGinder@verticalbridge.com)
Alex Gellman, CEO (by e-mail: AGellman@verticalbridge.com)

EXHIBIT C

Complaint, *City of Austin v. Texas*

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION

CITY OF AUSTIN,
Plaintiff,

v.

STATE OF TEXAS and GREG ABBOTT,
Texas Governor, in his official capacity,
Defendants.

§
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§
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§
§
§
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NO. _____

CITY OF AUSTIN'S ORIGINAL COMPLAINT

TO THE HONORABLE JUDGE OF THE COURT:

The City of Austin ("City") files this Original Complaint seeking declaratory and injunctive relief to prevent implementation of "Senate Bill No. 1004," a Texas law that frustrates the City's ability to manage public rights-of-way and require fair and reasonable compensation from companies that use public property to provide private mobile telephone services.

I. SUMMARY

1. Despite the clear mandates of the Federal Telecommunications Act (FTA), 47 U.S.C. §§ 151, *et seq.*, which guarantee the City's authority to manage public rights-of-way and require fair and reasonable compensation from telecommunications providers who use public property to transmit wireless telephone signals, Texas seeks to enforce a new Chapter 284 of its Local Government Code, which caps certain telecommunications fees at unreasonably low rates while frustrating the City's ability to safely and efficiently manage public rights-of-way.

2. The City brings this suit to challenge Senate Bill No. 1004¹ (SB 1004) which, beginning September 1, 2017, imposes new regulations that (1) allow "small cell" telecommunications

¹ Codified at TEXAS LOCAL GOVERNMENT CODE, §§ 284.001, *et seq.* (effective Sept. 1, 2017).

providers to obtain permits and use public land at costs far below the City's cost of service and the land's fair market value; (2) impair the City's ability to evaluate permit applications, collaborate across affected agencies, schedule construction to maximize safety and mobility, and ensure that work meets aesthetic standards; and (3) compel the City to grant mobile telecommunications providers with access to private property even if the property owner has not given written consent.

3. As described further below, SB 1004 conflicts with Sections 253(c) and 332(c)(7) of the FTA—which guarantee the City's authority to manage public rights-of-way and require fair and reasonable compensation from telecommunications providers that use public rights-of-way—and thereby violates the Supremacy Clause of the United States Constitution. SB 1004 also unconstitutionally compels the City to take property from private owners who have not consented to the use of small cell facilities on their land. To prevent these impending deprivations, the City requests immediate declaratory and injunctive relief.

II. JURISDICTION AND VENUE

4. The Court has jurisdiction under 28 U.S.C. § 1331 to decide the City's claims under the United States Constitution. The Declaratory Judgment Act, 28 U.S.C. §§ 2201, *et seq.*, provides the Court with further remedial authority.

5. Venue properly lies within the Western District of Texas. The City is situated in this District, and Defendant Governor Abbott resides in this District and maintains offices in this District. 28 U.S.C. §§ 124(d)(1), 1391(b)(1). A substantial portion of the events or omissions giving rise to this action occurred or will occur in this District. 28 U.S.C. § 1391(b)(2).

III. PARTIES

6. Plaintiff City of Austin, appearing and proceeding by and through its City Attorney, is a home-rule municipality and political subdivision of the State of Texas.

7. Defendant State of Texas is responsible for the actions of its officials with regard to state-wide enforcement of its laws and regulations.

8. Defendant Greg Abbott is the elected Governor of the State of Texas. Governor Abbott is sued in his official capacity.

IV. FACTUAL ALLEGATIONS

A. The Telecommunications Act Guarantees City Authority to Manage Rights-of-Way and Require Fair and Reasonable Compensation from Wireless Providers

9. The Federal Telecommunications Act (FTA) is a federal regulatory regime concerning the regulation of interstate communications. 47 U.S.C. §§ 151, *et seq.*

10. Section 253 of the FTA, entitled “Removal of barriers to entry,” categorically bars any state or local statute or regulation that would have the effect of prohibiting any entity from providing telecommunications services. 47 U.S.C. § 253(a).

11. Section 253(b) reserves for States the authority to impose regulations that “preserve and advance universal service, protect the public safety and welfare, ensure the continued quality of telecommunications services, and safeguard the rights of consumers.” *Id.*, § 253(b).

12. Section 253(c) reserves for States and local governments the authority to “manage the public rights-of-way” and “require fair and reasonable compensation from telecommunications providers” for facilities located in the public rights-of-way. *Id.*, § 253(c). Local government authority is subject to the requirement that right-of-way access be provided “on a competitively neutral and nondiscriminatory basis.” *Id.*

13. The purpose of Section 253(c) is to guarantee that local governments such as the City maintain control of public rights-of-way and receive fair and reasonable compensation for use of public property by telecommunications providers.

14. During Senate debate, Senator Hollins described the origin and purpose of 253(c) as being in response to the demands of city mayors. *See* 141 Cong. Rec. S8174 (daily ed. June 12, 1995). As Senator Hollins explained, Section 253(b) was written to address the concern of States that they maintain the authority to protect public safety and welfare. *Id.* And in the same way, Section 253(c) was written to maintain the status quo, that “every mayor must control the rights of way.” *Id.*

15. During House debate, Representative Stupak emphasized that Section 253(c) was passed in order to provide local authorities with the power both to control public rights of way and to be fairly compensated for the use of public property. *See* 141 Cong.Rec.H 8460 (daily ed. Aug. 4, 1995). Rep. Stupak offered an FTA amendment that became Section 253(c). As he stated:

[I]f the Stupak-Barton amendment is not adopted, you will have companies in many areas securing free access to public property. Taxpayers paid for this property, taxpayers paid to maintain this property, and it is simply not fair to ask the taxpayers to continue to subsidize telecommunication companies. In our free market society, the companies should have to pay a fair and reasonable rate to use public property.

141 Cong.Rec.H 8460.

16. In addition to Section 253(c), Section 332(c)(7) of the FTA preserves local zoning authority of public rights of way. 47 U.S.C. § 332(c)(7).

17. Since passage of the FTA, federal courts have expressly noted the authority of local governments to manage rights-of-way and require fair and reasonable compensation from telecommunications providers. *See BellSouth Telecommunications, Inc. v. Town of Palm Beach*, 252 F.3d 1169, 1188-89 (11th Cir. 2001) (citing testimony of Sen. Hollins); *Qwest Communications v. City of Berkeley*, 202 F.Supp.2d 1085, 1093 (N.D.Cal. 2001) (citing testimony of Sen. Hollins and Rep. Stupak).

B. Pursuant to Section 253(c), the City Developed a Pilot Program to Manage its Rights-of-Way and Require Fair and Reasonable Compensation from Wireless Companies Seeking to Install and Operate Small Cell Nodes on Public Property

18. As cellular telephone technology has become widespread, the City has received comment from a variety of sources, including telecommunications providers, concerning the need for a city-wide policy concerning wireless telecommunications installations in public rights-of-way.

19. In 2016, the City formed an interdepartmental task force to develop policy recommendations. This process included gathering feedback from telecommunications providers as well as input and analysis from fifteen City departments including: Transportation, which manages traffic light fixtures and other City right-of-way infrastructure; Planning and Zoning, which implements the City's "Great Streets" Master Plan; and Austin Energy, which manages City utility poles. The City developed standards and specifications for attaching small cell nodes to utility poles, traffic light fixtures, and other public property. The City considered impacts on public safety and welfare and explored how to reconcile wireless installations with existing design policies. The City also researched existing licensing and rental-fee structures at multiple cities across the country, including Dallas, Houston, and San Antonio.

20. Ultimately, the City adopted a pilot program—including new Code provisions and a fee schedule—concerning the procedures and terms for placement of small cell network facilities in downtown Austin rights-of-way using City infrastructure. The City began the pilot program in downtown Austin in March 2017, and intended to take the program city-wide thereafter.

21. As part of an ordinance authorizing fees and rents for small cell node facilities, the City set an application fee of \$1250, an annual use fee of \$1500 per attachment to downtown light signal poles, and an annual fee for underground placement of fiber optic cables which ranges from \$0.32 to \$2.50 per linear foot of trenched conduit. In support of its fee ordinance, the City published

documentation of the cost of administering a small cell node application program as well as the fair market value for use of public rights-of-way in the downtown Austin area.

C. SB 1004 Would Force the City to (1) Accept Application Fees Substantially Below the Cost of Service, (2) Accept Use Fees Far Below Market Value, (3) Grant Free Use of Public Land for Certain Facilities, and (4) Unreasonably Discriminate Against Certain Providers

22. SB 1004 would override the City's fee schedule. Beginning September 1, 2017, permit application fees for small cell nodes are capped as low as \$100 per node. TEX. LOCAL GOV'T CODE § 284.156² (effective Sept. 1, 2017). The City may not charge an annual pole or light signal use fee in excess of \$270 per small cell node, including \$250 for use of the right-of-way and \$20 for attachment to a City service pole. *Id.*, §§ 284.053, 284.056 (effective Sept. 1, 2017). And the City may not charge a use fee for underground placement of fiber optic cables in excess of \$28 per month. *Id.*, § 284.055 (effective Sept. 1, 2017).

23. The application fee cap imposed by SB 1004 sets compensation far below the City's cost of service. The City's cost of service to process an application is approximately \$1,234 per application. This cost includes the time it takes City staff to process license applications, conduct a field assessment, perform an inspection during the connection of new SCN facilities, and conduct a post-installation functionality inspection. These City staff activities are necessary to ensure that installations are performed safely and that the resulting structures do not pose a hazard to persons or property in the rights-of-way.

² "The amount of an application fee charged by a municipality may not exceed the lesser of: (1) the actual, direct, and reasonable costs the municipality determines are incurred in granting or processing an application that are reasonably related in time to the time the costs of granting or processing an application are incurred; or (2) \$500 per application covering up to five network nodes [and] \$250 for each additional network node per application...." TEX. LOCAL GOV'T CODE §§ 284.156(b)(1),(2).

24. The \$250 annual right-of-way use fee cap imposed by SB 1004 sets compensation far below fair market value for use of City property. The City determined that the fair market value of downtown Austin real estate is approximately \$100 per square foot. Under SB 1004, small cell providers may occupy as much as 34 cubic feet per small cell node installation, including small cell node antenna and related equipment. *See* TEX. LOCAL GOV'T CODE § 284.003(a) (effective Sept. 1, 2017). The City's existing ordinance charges \$1,500 annually for use of above-ground public property, which is not the maximum reasonable value for use of public land but still ensures that the public receives fair compensation. Under SB 1004, however, the City can recover only a small fraction of the value of the public property used.

25. The \$28 per node fiber optic rental fee cap sets compensation far below fair market value for use of underground City property.

26. Additionally, the flat fee structure for fiber optic rental fees unreasonably discriminates against telecommunications providers who need a smaller length of cable. As testimony at City hearings revealed, some providers may need less than twenty feet of cable, while others may need as much as two thousand feet of cable. The City set a cable fee structure based upon factors including the width of the conduit used to house the cable; the length of the conduit; whether or not telecommunications providers shared trenches or required their own separate trenches; and whether or not the provider possessed an existing conduit.

27. SB 1004 also grants telecommunications providers the right to use public land without any charge for additional facilities. New Section 284.057 prohibits any other fees on telecommunications providers. TEX. LOCAL GOV'T CODE § 284.057 (effective Sept. 1, 2017). At the same time, new Section 284.157 allows telecommunication providers to increase the size of utility poles and install "micro network nodes" on electric and telecommunications cables without

any charge for use of public rights-of-way. *Id.*, § 284.157 (effective Sept. 1, 2017). Moreover, SB 1004 permits telecommunications providers to construct new node support poles in public rights-of-way without payment of the fair market value for use of public land. *See id.*, § 284.152 (allowing City to impose a permit requirement but not allowing use fees) (effective Sept. 1, 2017); *but see* § 284.104 (allowing City to restrict installation of new node support poles in municipal parks and certain residential areas) (effective Sept. 1, 2017).

D. SB 1004 Will Frustrate the City's Ability to Manage Public Rights-of-Way

28. SB 1004 contains numerous provisions that frustrates the City's ability to ensure safe and efficient use of public rights-of-way.

29. New Section 284.151 prohibits any City "moratorium" on issuing permits or other approvals for small cell nodes. *Id.*, 284.151(c) (effective Sept. 1, 2017). This provision will limit the ability of the City to schedule work in public rights-of-way. Presently, the City emphasizes safety and mobility in its management of the rights-of-way. Often, particular conditions require delays in construction. For example, during the annual South by Southwest festival, the City scales back work in the rights-of-way to accommodate the arrival of hundreds of thousands of visitors. The City needs to have scheduling flexibility in order to avoid unnecessary closures of streets and sidewalks, avoid congestion, and mitigate threats to safety and mobility.

30. New Section 284.154 imposes certain time limits on the City's ability to review permit applications from telecommunications providers seeking to install small cell node facilities. *Id.*, § 284.154 (effective Sept. 1, 2017). These limits, known as "shot clocks," include a thirty day time limit for review of small cell node permit applications as well as other limitations. These shot clocks inhibit the City's ability to collaborate across Departments, investigate community concerns, and effectively review each permit application.

31. Further, the combination of the moratorium and shot clock provisions presents the opportunity for telecommunications providers to submit many permit applications at the same time and thus overload the City's capacity to effectively evaluate each new installation in the public rights-of-way. If the City is not able to effectively evaluate each permit application, the placement of new small cell nodes may negatively impact safety, mobility, and the public welfare.

E. SB 1004 Would Also Force the City to Allow Placement of Small Cell Node Facilities on City Utility Poles in Residential Neighborhoods Without the Consent of Private Property Owners and Without Just Compensation for the Use of Property

32. New Section 284.201 requires the City to allow telecommunications providers to place small cell nodes on any City-owned utility poles. TEX. LOCAL GOV'T CODE § 284.201(a) (effective Sept. 1, 2017). The statute reads:

The governing body of a municipally owned utility shall allow collocation of network nodes on municipally owned utility poles on nondiscriminatory terms and conditions and pursuant to a negotiated pole attachment agreement, including any applicable permitting requirements of the municipally owned utility.

Id., § 284.201(a).

33. Many City-owned utility poles are located on private residential properties. The City acquired rights to place poles on these properties subject to specific terms and conditions.

34. In many cases, the City's poles are subject to use conditions including the promise that City poles would only be used for electric or telephone wires that benefit the burdened property or neighboring properties. The installation of small cell node wireless transmission equipment would not be for the benefit of particular properties, however, and would thus be inconsistent with the City's rights of use. Further, SB 1004 provides no compensation to private property owners for the use of their property to transmit private mobile telecommunications signals.

V. CLAIMS

FIRST CAUSE OF ACTION: SUPREMACY CLAUSE

35. The City hereby incorporates by reference the preceding paragraphs 1 through 34.

36. SB 1004 violates the Supremacy Clause of the United States Constitution and obstructs the purposes and objectives of Congress by requiring the City to allow telecommunications providers to utilize public property without paying fair and reasonable compensation. The FTA grants the City authority to manage rights-of-way and require fair and reasonable compensation for the use of public property by telecommunications providers. The compensation caps of SB 1004 obstruct the purposes and objectives of the FTA, as expressed in Section 253(c), by capping small cell node fees at rates far below the cost of service and the fair market value for use of public property.

37. SB 1004 also violates the Supremacy Clause by frustrating the City's ability to manage public rights-of-way. Through its prohibition on any City "moratorium" and through its imposition of "shot clocks" limiting the City's time to evaluate small cell node permit applications, SB 1004 impairs the City's ability to guarantee safety, mobility, and public welfare in regard to use of rights-of-way, in contradiction to the FTA, including Sections 253(c) and 332(c)(7).

38. SB 1004 further violates the Supremacy Clause by requiring the City to set a flat fee structure for use of fiber optic cables in the public rights-of-way, when in practice telecommunications providers will need access to cable of varying lengths and widths. SB 1004 would force the City to discriminate against providers who use smaller and narrower lengths of cable by requiring such providers to pay the same fees as providers who use longer and wider cable lengths. Such discrimination would conflict with the FTA, including Section 253(c), which prohibits states and local authorities from imposing anti-competitive or discriminatory compensation requirements.

SECOND CAUSE OF ACTION: TAKINGS

39. The City hereby incorporates by reference the preceding paragraphs 1 through 38.

40. SB 1004 compels the City to unlawfully take property from Texas residents in violation of the United States Constitution. Specifically, Section 284.201(a) of SB 1004 requires the City to allow telecommunications providers to install small cell node facilities on City utility poles, even if such installation violates the City's agreement with private property owners concerning the scope of the City's use of private land. To the extent that the City has not obtained a right to use private property for transmission of private mobile wireless services, each installation of a small cell node on a City utility pole located on private land will constitute a taking of private property without just compensation.

PRAYER FOR RELIEF

The City seeks relief including:

- A. A declaration that SB 1004 is unconstitutional;
- B. A preliminary and permanent injunction barring defendants from enforcing SB 1004; and
- C. Any further relief that the Court deems fit and proper.

Respectfully submitted,

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